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Transcript of James Dondero

Date: May 10, 2021

Case: UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Transcript of James Dondero
Conducted on May 10, 2021

1 (1 to 4)

1	1	1	3
2	IN THE UNITED STATES BANKRUPTCY COURT	2	A P P E A R A N C E S
3	FOR THE NORTHERN DISTRICT OF TEXAS	3	
4	DALLAS DIVISION	4	ON BEHALF OF PLAINTIFFS:
5	-----X	5	ANDREW CLUBOK, ESQUIRE
6	In re : Chapter 11	6	SARAH TOMKOWIAK, ESQUIRE
7	HIGHLAND CAPITAL MANAGEMENT, L.P., Case No:	7	KATHRYN GEORGE, ESQUIRE
8	Debtor : 19-34054-SGJ11	8	LATHAM & WATKINS LLP
9	-----:	9	555 Eleventh Street, NW
10	UBS SECURITIES LLC and UBS AG : Adversary No.	10	Suite 1000
11	LONDON BRANCH, : 21-03020-sgi	11	Washington, District of Columbia 20004
12	Plaintiffs, :	12	(202) 637-2200
13	vs. :	13	
14	HIGHLAND CAPITAL MANAGEMENT, L.P.:	14	ON BEHALF OF DEFENDANT-HIGHLAND CAPITAL MGMT.
15	Defendant. : -----X	15	ROBERT FEINSTEIN, ESQUIRE
16		16	JOHN MORRIS, ESQUIRE
17	DEPOSITION OF JAMES DONDERO	17	GREGORY DEMO, ESQUIRE
18	APPEARING REMOTELY FROM DALLAS, TEXAS	18	JEFFREY POMERANTZ, ESQUIRE
19	MONDAY, MAY 10, 2021	19	PACHULSKI STANG ZIEHL & JONES
20	11:00 A.M. EST	20	780 Third Avenue
21		21	34th Floor
22	Job No.: 371141	22	New York, New York 10017
23	Pages 1 - 267	23	(212)561-7700
24	Reported by: Adrienne Mignano, RPR	24	
25	Appearing remotely	25	
2	2	4	4
1	Deposition of JAMES DONDERO, held via Zoom	1	APPEARANCES (Continued)
2	videoconferencing, pursuant to Notice, before Adrienne	2	
3	M. Mignano, a Registered Professional Reporter and a	3	
4	Notary Public in and for the State of New York.	4	ON BEHALF OF WITNESS
5		5	CLAY TAYLOR, ESQUIRE
6		6	BONDS ELLIS EPPICH SCHAFFER JONES, LLP
7		7	420 Throckmorton Street
8		8	Suite 1000
9		9	Fort Worth, Texas 76102
10		10	(817)405-6900
11		11	
12		12	
13		13	ALSO PRESENT:
14		14	Drew Halton - Videographer
15		15	Jordan Collins - Remote Technician
16		16	Joshua Tubbs - Remote Technician
17		17	
18		18	
19		19	
20		20	
21		21	
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25		25	

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2	REMOTE TECH: Thank you to everyone for	
3	attending this proceeding remotely, which we	
4	anticipate will run smoothly. Please remember to	
5	speak slowly and do your best not to talk over one	
6	another.	
7	Please be aware we are recording this	
8	proceeding for backup purposes. Any	
9	off-the-record discussions should be had away from	
10	the computer. Please remember to mute your mic	
11	for those conversations.	
12	Please have your video enabled to help	
13	the reporter identify who is speaking. If you are	
14	unable to connect with video and are connecting	
15	via phone, please identify yourself each time	
16	before speaking.	
17	I apologize in advance for any	
18	technical-related interruptions. Thank you.	
19	THE VIDEOGRAPHER: Here begins Tape	
20	Number 1 in the videotaped deposition of James	
21	Dondero in the matter of UBS Securities LLC, et	
22	al. versus Highland Capital Management LP in the	
23	U.S. Bankruptcy Court, Northern District of Texas,	
24	Dallas Division; Case Number 19-34054-SGJ11.	
25	Today's date is May 10th, 2021. The	
	time on the video monitor is 11:05 a.m. Eastern.	
1		
2	The videographer today is Drew Halton,	
3	representing Planet Depos. All participants are	
4	attending remotely.	
5	Would counsel please voice identify	
6	themselves and state whom they represent.	
7	MR. CLUBOK: On behalf of UBS, it is	
8	Andrew Clubok, Sarah Tomkowiak and Kathryn George,	
9	all from Latham & Watkins LLP.	
10	MR. FEINSTEIN: On behalf of the	
11	defendant, Highland Capital Management, I'm Robert	
12	Feinstein from Pachulski, Stang, Ziehl & Jones.	
13	With me are my colleagues, Jeffrey Pomerantz, John	
14	Morris and Gregory Demo.	
15	MR. TAYLOR: Clay Taylor on behalf of	
16	Jim Dondero, appearing pursuant to a subpoena	
17	issued to a third-party.	
18	Just for purposes of a clean record, I	
19	believe the case number that was identified was	
20	the main bankruptcy case number rather than the	
21	adversary number, and that probably needs to be	
22	corrected.	
23	THE VIDEOGRAPHER: Sir, if you have	
24	that available, would you mind reading that into	
25	the record now?	
	MR. TAYLOR: Certainly.	
1		
2	THE VIDEOGRAPHER: Thank you.	
3	MR. TAYLOR: One second, please. Just	
4	pulling it up.	
5	MR. CLUBOK: I believe it is Number	
6	21-03020-SGJ.	
7	MR. TAYLOR: Thank you, Andy.	
8	THE VIDEOGRAPHER: The court reporter	
9	today is Adrienne Mignano, representing Planet	
10	Depos.	
11	Would the reporter please swear in the	
12	witness.	
13	Whereupon,	
14	JAMES DONDERO,	
15	being first duly sworn or affirmed to testify to	
16	the truth, the whole truth, and nothing but the	
17	truth, was examined and testified as follows:	
18	EXAMINATION BY COUNSEL FOR THE PLAINTIFF	
19	BY MR. CLUBOK:	
20	Q Good morning, Mr. Dondero.	
21	A Good morning.	
22	Q Mr. Dondero, you have been deposed	
23	before, correct?	
24	A Yes.	
25	Q Many times, right?	
	A Yes.	

Transcript of James Dondero
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3 (9 to 12)

<p>9</p> <p>1 Q And you understand that in a deposition 2 we have to be careful not to talk over each other, 3 right? 4 A Yes. 5 Q If either of us -- if I find either of 6 us doing that, like if I start talking before 7 you're done answering or if you start answering 8 before I'm done talking, I may try to stop and 9 reset so the court reporter can get a clean 10 record. Do you understand that? 11 A Okay. 12 Q And so to that end, if you'd pause for 13 just a second when you think I'm done to make sure 14 I'm done, and I'll try to do the same for you, 15 that will help us make sure we don't talk over 16 each other as much as possible, okay? 17 A Yes. 18 Q And you know that if you say "uh-huh" 19 or "uh-uh" and shake your head or something like 20 that, that may not be clear on the record, and so 21 instead of doing that, you'll try to answer with 22 like "yes" or "no" as opposed to head signals or 23 "uh-huhs"; is that okay? 24 A Yes. 25 Q And if I catch you doing it, I'll just</p>	<p>11</p> <p>1 A Yes. 2 Q Any reason why you can't give fully 3 truthful, accurate answers to questions today? 4 A No. 5 Q Okay. Mr. Dondero, you used to be 6 effectively in charge of Highland Capital 7 Management until the bankruptcy, correct? 8 A Yes. 9 Q And you were also in charge of other 10 entities besides Highland Capital Management, 11 correct? 12 A Yes. 13 MR. CLUBOK: Is that noise coming from 14 somewhere? I don't know if you're hearing that. 15 MR. TAYLOR: Yes, there is an emergency 16 alert that is being issued for this area for a 17 severe thunderstorm, and that was what was -- what 18 you heard in the background. So to the extent we 19 have a tornado come through, we'll have to shut it 20 down. 21 MR. CLUBOK: I think we had a tornado 22 come through one deposition before that I was 23 involved with Mr. Dondero, at least one of them, I 24 seem to recall. But -- 25 THE WITNESS: It will be a sign from</p>
<p>10</p> <p>1 say, is that a yes? I'm not trying to be rude. I 2 just want to make sure you're clear if you're 3 saying "uh-huh" or "uh-uh" or something. If it is 4 actually a "no," just tell me, no, that meant that 5 was a no. But I may follow up with you if I catch 6 you giving a nonverbal answer, okay? 7 A Yes. 8 Q And you understand you're under oath 9 and you have to tell the truth as completely and 10 accurately as possible? 11 A Yes. 12 Q And you understand if I ask you a 13 question that is capable of being answered with a 14 simple yes or no, you will do that, correct? 15 A Yes. 16 Q And by the way, if I happen to ask -- 17 sometimes I find -- I have seen in these 18 transcripts where I may ask a double negative. If 19 I said, for example, it's not raining outside, and 20 you are like, no, that could be confusing. And if 21 I catch us doing that, if I see us doing that, I 22 might follow up and say, it is true that it is not 23 raining outside, right? I'm just doing that, 24 again, to make sure the record is clear as opposed 25 to unclear. Is that okay with you?</p>	<p>12</p> <p>1 God that you should stop. 2 MR. CLUBOK: Yeah, well, we'll take it 3 as a sign from the National Weather Service, too, 4 that we should stop. 5 So let us know, Clay, if you do get any 6 kind of notice like that that says you need to 7 take some kind of action. 8 Q By the way, Mr. Dondero, do you have 9 anything at all in front of you as you're sitting 10 there today? 11 A Just the laptop. 12 Q Just the laptop with the video. Is 13 there anything on the laptop other than the Zoom 14 screen for this deposition? 15 A Nope. 16 Q Okay. And you understand you're not 17 allowed to refer to anything -- notes or anything, 18 assistance in answering questions, without letting 19 us know that you're doing that, correct? 20 A Yes. 21 Q Okay. Thank you. 22 So, sir, one of the other entities that 23 you -- that you're in control of is an entity 24 Called Sentinel Insurance, correct? 25 MR. TAYLOR: Objection. Form.</p>

<p>13</p> <p>1 A I wouldn't use the word "control." 2 Q Okay. And I think I said the wrong 3 name. I think it is technically called Sentinel 4 Reinsurance. Is that the name of the entity? 5 A I don't know the official name. It's 6 Sentinel something. 7 Q Okay. And what does Sentinel 8 Reinsurance do? 9 A It's an offshore Cayman-based 10 reinsurance company. 11 Q What does that mean? 12 A As far as I understand, it does some 13 insurance, it does some reinsurance and it -- I 14 believe it is conforming and it is in compliance 15 with regulations regarding qualification as a 16 Cayman reinsurer and it invests its capital and 17 its premiums. 18 Q You own part of Sentinel Reinsurance, 19 correct? 20 A I believe I'm a beneficial holder of a 21 majority of it. 22 Q Okay. You're the beneficial holder of 23 the majority of Sentinel Reinsurance, correct? 24 A Yes. 25 Q And you have been since its founding,</p>	<p>15</p> <p>1 Q Was it more than \$1 million? 2 A Probably, but I don't -- 3 Q Was it more than \$10 million? 4 A I don't know. 5 Q Was it more than \$100 million? 6 MR. TAYLOR: Andy, I'm going to ask 7 that you move on. It's been asked and answered 8 four times now. 9 A I really don't know, Andy. 10 Q Was it more than \$1 billion? 11 A It was less than \$1 billion, I'm sure, 12 but I don't know how much it was. 13 Q Okay. Was it less than \$500 million? 14 MR. TAYLOR: Objection. 15 A Yes. 16 Q Okay. Was it less than \$100 million? 17 A I don't know. 18 Q Okay. Was it less than \$250 million? 19 MR. TAYLOR: Objection. 20 A Was it less than -- yes. 21 Q Okay. Was it less than 200 million? 22 A Yes. 23 Q Was it less than 150 million? 24 A Yes. 25 Q Okay. Was it less than 125 million?</p>
<p>14</p> <p>1 correct? 2 A I believe so. 3 Q And, in fact, you are the beneficial 4 holder of approximately 70 percent of the economic 5 interest in Sentinel Reinsurance, correct? 6 A I believe that's approximately correct. 7 Q And the other beneficial holder of 8 Sentinel Reinsurance is Scott Ellington, right? 9 A I believe so. 10 Q And you and Scott Ellington are the 11 only two beneficial holders of the economic 12 interest in Sentinel Reinsurance, correct? 13 A I -- I don't know. I believe so, but I 14 don't know. 15 Q And that's been the case since the 16 founding of Sentinel Reinsurance, to the best of 17 your knowledge, correct? 18 A To the best of my knowledge. 19 Q Did you invest any money in Sentinel 20 Reinsurance, invest any capital? 21 A I believe so. 22 Q Roughly how much? 23 A I don't know. 24 Q Roughly. 25 A I don't know. I don't remember.</p>	<p>16</p> <p>1 A Yes. 2 Q Was it more than 50 million? 3 A I don't know. 4 Q Was it more than 1 million? 5 A I don't know, Andy. 6 Q Okay. So fair to say -- I thought you 7 said it was probably more than a million, you 8 thought. 9 MR. TAYLOR: Objection. Asked and 10 answered. 11 A Yes. 12 Q Okay. So is there -- so do you have 13 any ability to narrow the amount of capital you 14 invested in Sentinel Reinsurance in a range that 15 is smaller than from 1 to \$125 million? 16 A From 1 to 100 would be the range. And 17 I don't have a basis for knowing more specifically 18 than that. 19 Q And you have no idea within that range 20 whether it was closer to 1 million or closer to 21 100. It's just somewhere in that range and you 22 have no further information. Is that your 23 testimony? 24 A Yes. 25 Q When did you put the capital into</p>

<p>17</p> <p>1 Sentinel Reinsurance?</p> <p>2 A I don't know. A half of a dozen years</p> <p>3 ago, I guess. I don't know.</p> <p>4 Q Just at its founding?</p> <p>5 A No. I think there's been other</p> <p>6 contributions along the way also.</p> <p>7 Q Do you have records of how much you've</p> <p>8 invested into Sentinel Reinsurance?</p> <p>9 A No, I do not.</p> <p>10 Q You have no tax records, no records</p> <p>11 with your investment, there is no record at all in</p> <p>12 your control that would tell you how much you</p> <p>13 invested in Sentinel Reinsurance in a closer</p> <p>14 approximation than 1 to \$100 million?</p> <p>15 A I don't know. All I know is if I was a</p> <p>16 tax reporter or if it was offshore income, or if</p> <p>17 it was -- if it was -- however it was supposed to</p> <p>18 be properly accounted for, I'm confident that it</p> <p>19 was. There was no attempt to not comply with</p> <p>20 whatever regulation or taxing was relevant.</p> <p>21 Q Okay. But do you keep records of your</p> <p>22 investments somewhere?</p> <p>23 A I do not.</p> <p>24 Q Does anyone keep records of your</p> <p>25 investments on your benefit --</p>	<p>19</p> <p>1 A I don't know what the address is here.</p> <p>2 THE WITNESS: Do you know what the</p> <p>3 address is here?</p> <p>4 Hold on one second. We'll get it for</p> <p>5 you.</p> <p>6 MR. TAYLOR: Well, just for purposes of</p> <p>7 a clean record, I'm showing Mr. Dondero something</p> <p>8 off of my calendar where I have the address</p> <p>9 written down so that he can refer to it, and it's</p> <p>10 just a calendar appointment from my phone.</p> <p>11 A It's 2515 McKinney Avenue.</p> <p>12 Q And do you have a permanent office in</p> <p>13 that location?</p> <p>14 A Yes.</p> <p>15 Q What other entities work in the same</p> <p>16 location that are in any way connected to you?</p> <p>17 A NexBank, NextPoint and -- I don't know</p> <p>18 how we're doing the shared services with</p> <p>19 SkyBridge. I don't know if SkyBridge is</p> <p>20 associated with me. So I -- but they're in the</p> <p>21 offices here, too, at the moment. We're getting</p> <p>22 office space -- we were expecting to stay at</p> <p>23 Highland so it's been a bunch -- it's been a -- we</p> <p>24 located over here -- relocated over here quickly,</p> <p>25 but ultimately we'll spread out from here at some</p>
<p>18</p> <p>1 MR. CLUBOK: Strike that.</p> <p>2 Q Does anyone on your behalf keep records</p> <p>3 of your investments, to your knowledge, like an</p> <p>4 accountant, a tax preparer, a lawyer, a financial</p> <p>5 advisor, anyone like that?</p> <p>6 A The tax department handles all my taxes</p> <p>7 domestically, internationally and all the relevant</p> <p>8 compliance. My personal balance sheets or assets</p> <p>9 handled by Melissa Schroth in my office.</p> <p>10 Q Okay. You said the tax department</p> <p>11 handles all your taxes domestically,</p> <p>12 internationally and all the relevant compliance.</p> <p>13 The tax department of what entity?</p> <p>14 A They were formerly of Highland. Now</p> <p>15 they're of -- one of the entities over here. I</p> <p>16 don't know if it's NextPoint or SkyBridge or</p> <p>17 whatever.</p> <p>18 Q When you say "here," where are you</p> <p>19 physically today?</p> <p>20 A In the bank next to the -- in the</p> <p>21 NexBank office space across the street from the</p> <p>22 old Highland offices.</p> <p>23 Q Do you have an office there?</p> <p>24 A Yes.</p> <p>25 Q What is your business address?</p>	<p>20</p> <p>1 point.</p> <p>2 Q And you said -- you named a woman who</p> <p>3 had your personal balance sheets, Melissa -- and</p> <p>4 could you spell her last name.</p> <p>5 A S-H-R-O-T-H.</p> <p>6 Q Does she work there in the building</p> <p>7 that you're in right now?</p> <p>8 A Yes.</p> <p>9 Q And did she previously work for</p> <p>10 Highland Capital Management?</p> <p>11 A Yes.</p> <p>12 Q Does Scott Ellington work there?</p> <p>13 A I haven't seen him, but I believe so.</p> <p>14 Q When was the last time you spoke with</p> <p>15 Scott Ellington?</p> <p>16 A Last year.</p> <p>17 Q Does Isaac Leventon work there with you</p> <p>18 in that office?</p> <p>19 A I believe so, but I haven't seen or</p> <p>20 talked with him either.</p> <p>21 Q When was the last time you spoke with</p> <p>22 Isaac Leventon?</p> <p>23 A Last year.</p> <p>24 Q You mean 2020?</p> <p>25 A Yes.</p>

<p>21</p> <p>1 Q Have you in any way communicated 2 directly or indirectly with Scott Ellington about 3 anything in 2021? 4 MR. FEINSTEIN: Can I just interject 5 here for one second, please? This is Rob 6 Feinstein. 7 So I did want to put a comment on the 8 record regarding Highland Capital Management's 9 attorney-client privilege as it pertains to this 10 deposition. So I want to be very clear that we 11 are not waiving the privilege in regard to 12 anything with one exception, and that is the 13 matters and transactions that are discussed in the 14 Highland Capital Management motion for approval of 15 UBS settlement, and I think, in particular, 16 paragraphs 5 to 11, which set forth the facts and 17 circumstances regarding the Sentinel Reinsurance 18 insurance policy and related transactions, and as 19 to those matters, we are not asserting the 20 privilege. 21 BY MR. CLUBOK: 22 Q Have you in any way communicated 23 directly or indirectly with Scott Ellington about 24 anything in 2021? 25 A No.</p>	<p>23</p> <p>1 SkyBridge and NexBank and NextPoint. 2 Q Have you spoken with Katie Irving at 3 all in 2021? 4 A I have not. I believe she is on 5 maternity leave, still. 6 Q Have you -- when you spoke with 7 Mr. Sevilla, did you talk in any way about 8 Sentinel Reinsurance? 9 A No. 10 Q When was the last time you spoke to 11 anybody about Sentinel Reinsurance other than your 12 lawyers? 13 A I haven't. I know -- I haven't and I 14 have purposely not tried to refamiliarize myself 15 with anything there. 16 Q When was the last time you were 17 familiar with anything -- 18 MR. CLUBOK: Strike that. 19 Q When was the last time you spoke with 20 anybody about Sentinel Reinsurance prior to 2021? 21 MR. TAYLOR: Objection. Form. 22 Q Okay. Let me just ask, other than your 23 lawyers, who was the last person you spoke to 24 about Sentinel Reinsurance on any matter? 25 A I can't remember specifically. It</p>
<p>22</p> <p>1 Q Have you communicated directly or 2 indirectly with Isaac Leventon about anything in 3 2021? 4 A No. 5 Q Have you communicated with J.P. Sevilla 6 in 2021 about anything? 7 A Yes. J.P Sevilla is actively engaged 8 in a lot of Highland- and NextPoint-related 9 activities. Or not Highland, I'm sorry. A lot of 10 NextPoint-related activities and SkyBridge-related 11 activities. 12 Q Does Mr. Sevilla have an office in the 13 same building you're in now? 14 A Yes. Not in the same floor, but in the 15 same building. 16 Q And when was the last time you spoke 17 with Mr. Sevilla? 18 A Last week. 19 Q How about Matt DiOrio? Do you speak 20 with him at all? 21 A Infrequently. I think I have spoken to 22 him once this year. 23 Q When was that? 24 A When we first moved here early March to 25 set up the shared services agreement between</p>	<p>24</p> <p>1 would have been -- it would have been Scott 2 Ellington. And I -- it would have been sometime 3 last year. And it really would have been in the 4 context of we were trying to get a Cayman bank 5 going, and there was going to be -- there was 6 going to be some involvement, I think, from 7 Sentinel and Matt, but we didn't get the bank off 8 the ground last year. 9 Q Is this post bankruptcy? 10 A I don't know. It was either post 11 bankruptcy or shortly before. 12 Q Did you ever speak with Jim Seery about 13 Sentinel Reinsurance? 14 A No, I did not. 15 Q Did you ever speak with John Dubel 16 about Sentinel Reinsurance? 17 A No, I did not. 18 Q Did you ever speak with Judge Nelms 19 about Sentinel Reinsurance? 20 A No, I did not. 21 Q Did you tell any of the lawyers at the 22 Pachulski law firm anything about Sentinel 23 Reinsurance? 24 A No, I did not. 25 Q Have you ever told anyone at UBS</p>

<p>25</p> <p>1 anything about Sentinel Reinsurance?</p> <p>2 A I do not think so.</p> <p>3 Q You have spoken with Isaac Leventon</p> <p>4 about Sentinel Reinsurance in the past, correct?</p> <p>5 A No, I do not believe I have. I</p> <p>6 don't -- I didn't think Isaac was materially</p> <p>7 involved with Sentinel before.</p> <p>8 Q You have spoken to J.P. Sevilla about</p> <p>9 Sentinel Reinsurance, right?</p> <p>10 A No. I -- sentinel Reinsurance is not</p> <p>11 something I was intimately involved with on an</p> <p>12 operating or day-to-day basis. Ellington is the</p> <p>13 only person I remember talking to Sentinel about,</p> <p>14 really, ever.</p> <p>15 Q The only person you have ever spoken to</p> <p>16 about Sentinel Reinsurance, as you can recall</p> <p>17 sitting here today, other than your lawyers in</p> <p>18 this matter, is Scott Ellington; is that correct?</p> <p>19 A Yes.</p> <p>20 Q Have you ever spoken with Matt DiOrio</p> <p>21 about Sentinel Reinsurance?</p> <p>22 A No, I have not.</p> <p>23 Q Have you ever spoken with any of the</p> <p>24 directors of Sentinel Reinsurance?</p> <p>25 A No, I have not.</p>	<p>27</p> <p>1 A No. I don't think I ever have.</p> <p>2 Q How did you know what was in their</p> <p>3 portfolio?</p> <p>4 A Ellington would tell me when they had</p> <p>5 cash available. It was really when they had cash</p> <p>6 available to spend he would be looking for</p> <p>7 suggestions.</p> <p>8 Q And other than Ellington coming to you</p> <p>9 for suggestions about how to spend cash that</p> <p>10 Sentinel Reinsurance had available, you can't</p> <p>11 recall any other specific business issue that</p> <p>12 Scott Ellington ever came to you with -- about</p> <p>13 with respect to Sentinel Reinsurance?</p> <p>14 A Correct.</p> <p>15 Q Did you know who were the insurers that</p> <p>16 Sentinel Reinsurance did business with?</p> <p>17 A No. I mean, I know generally they did</p> <p>18 some D&O insurance, I think they did some title</p> <p>19 reinsurance, and they did some other policies.</p> <p>20 But I don't know who specifically was on the other</p> <p>21 side of those policies.</p> <p>22 Q Do you have any idea about anyone who</p> <p>23 was on the other side of any policy that's ever</p> <p>24 been issued by Sentinel Reinsurance?</p> <p>25 A I have a -- I mean, I have an awareness</p>
<p>26</p> <p>1 Q Have you ever made decisions on behalf</p> <p>2 of Sentinel Reinsurance?</p> <p>3 A I think from time to time I gave some</p> <p>4 investment advice, but that's -- that would be the</p> <p>5 extent of it.</p> <p>6 Q Did you ever make decisions on behalf</p> <p>7 of Sentinel Reinsurance?</p> <p>8 A Not that I can recall other than, like</p> <p>9 I said, periodically giving investment advice.</p> <p>10 Q But you -- when you say you gave</p> <p>11 investment advice, who did you give that advice</p> <p>12 to?</p> <p>13 A Ellington.</p> <p>14 Q And that was just advice, it wasn't a</p> <p>15 directive?</p> <p>16 A Correct.</p> <p>17 Q And other than -- and what was that</p> <p>18 specific advice you gave, if you can recall?</p> <p>19 A I don't remember. Just that it was,</p> <p>20 you know, periodically, infrequently, no more than</p> <p>21 once -- I would say once a year on average, just</p> <p>22 advice if they had cash or were repositioning the</p> <p>23 portfolio.</p> <p>24 Q Did you receive any documents about the</p> <p>25 financial position of Sentinel Reinsurance?</p>	<p>28</p> <p>1 of the policy that we're talking about here today,</p> <p>2 but it's really just a general awareness.</p> <p>3 Q What is your general awareness about</p> <p>4 the policy that you're here to talk about today?</p> <p>5 A That it's a -- my recollection is that</p> <p>6 it's a \$100 million, plus/minus, but I think it's</p> <p>7 a \$100 million face policy. And it was done half</p> <p>8 a dozen years ago, approximately.</p> <p>9 Q Who is the insured?</p> <p>10 A I don't know -- I don't know. I</p> <p>11 believe it was -- I don't know what part or which</p> <p>12 entities, but I believe it was -- specifically,</p> <p>13 but HFP was a holding company structure with four</p> <p>14 or five different subsidiaries. I believe it was</p> <p>15 some part of that organization.</p> <p>16 Q You believe that HFP was the insured</p> <p>17 under the policy that we're here to talk about</p> <p>18 today?</p> <p>19 MR. TAYLOR: Objection. Misstates</p> <p>20 prior testimony.</p> <p>21 A Like I said, I didn't try and refresh</p> <p>22 myself on this. I thought it was either a</p> <p>23 subsidiary or holding company or part of or all</p> <p>24 of -- I don't know -- of that entity, as far as I</p> <p>25 know.</p>

<p>29</p> <p>1 Q Do you know anything else about the</p> <p>2 insureds under the policy other than that?</p> <p>3 A No, I do not.</p> <p>4 Q Do you know what the point of the</p> <p>5 policy is?</p> <p>6 MR. TAYLOR: Objection. Vague.</p> <p>7 Q Do you know what the policy is designed</p> <p>8 to insure against?</p> <p>9 A I've never seen the policy. I don't</p> <p>10 know the specific payout triggers and -- no, I do</p> <p>11 not.</p> <p>12 Q You have no idea whatsoever, sitting</p> <p>13 here today, what this policy that we're here to</p> <p>14 talk about today was designed to insure against.</p> <p>15 Is that your testimony?</p> <p>16 A That's correct. I have never seen it.</p> <p>17 I don't know the specifics of it.</p> <p>18 Q Do you generally know what the policy</p> <p>19 that we're here to talk about today was designed</p> <p>20 to ensure against?</p> <p>21 A Again, just really the most general</p> <p>22 sense. It was to provide, I believe, cash for</p> <p>23 legal expenses and to defend against any claims, I</p> <p>24 believe, that -- whatever relevant entity was the</p> <p>25 beneficiary in the HFP complex, to provide them</p>	<p>31</p> <p>1 Q Who paid for the policy?</p> <p>2 A I believe the beneficiary paid for the</p> <p>3 policy.</p> <p>4 Q Which beneficiary?</p> <p>5 A I don't know. I don't know, whichever</p> <p>6 was the beneficiary of the policy I believe paid</p> <p>7 for it.</p> <p>8 Q And your testimony is that the</p> <p>9 beneficiary is some part of the HFP complex, as</p> <p>10 you call it?</p> <p>11 A Yes.</p> <p>12 Q And did the -- okay. And did you have</p> <p>13 any --</p> <p>14 MR. CLUBOK: Strike that.</p> <p>15 Q When did you first hear about this</p> <p>16 policy?</p> <p>17 A I mean, at or about when it was put</p> <p>18 together. I mean, you know -- yeah, at or about</p> <p>19 shortly before when it was put together.</p> <p>20 Q Well, was it -- so shortly before it</p> <p>21 was put together you were told about it?</p> <p>22 A Yes.</p> <p>23 Q By whom?</p> <p>24 A I'm sorry, was there a question there?</p> <p>25 Q I'm sorry, I said, "By whom?" You said</p>
<p>30</p> <p>1 with legal fees and serv- -- cash for legal fees</p> <p>2 and services to defend itself or operate or -- I</p> <p>3 believe that structure was winding down. And it</p> <p>4 wasn't really operating as a structure. So I</p> <p>5 think it was meant as a transition policy of some</p> <p>6 sort, but that's all I know.</p> <p>7 Q Do you know -- so I had asked you if</p> <p>8 you generally knew what the policy that we're here</p> <p>9 to talk about today was designed to insure</p> <p>10 against. You just gave your answer.</p> <p>11 Is that the entirety of what you know</p> <p>12 about what the policy was designed to insure</p> <p>13 against, as you sit here today?</p> <p>14 MR. TAYLOR: Objection. Asked and</p> <p>15 answered.</p> <p>16 A I mean, yes. I wasn't directly</p> <p>17 involved with putting the policy together in terms</p> <p>18 of its terms and specifics.</p> <p>19 Q So I'm going to ask you one more time</p> <p>20 very broadly. Is there anything else at all you</p> <p>21 know about this policy that you haven't described?</p> <p>22 MR. TAYLOR: Objection. Vague.</p> <p>23 A I mean, you can ask me some other</p> <p>24 specific questions, but I know very little, but</p> <p>25 there may be something else I know.</p>	<p>32</p> <p>1 shortly before the policy --</p> <p>2 A Scott Ellington crafted it, and then</p> <p>3 Sky -- Ellington handled getting it through</p> <p>4 compliance and the insurance company in the</p> <p>5 Caymans.</p> <p>6 Q Okay. So you first heard about this</p> <p>7 policy from Scott Ellington, correct?</p> <p>8 A Yes.</p> <p>9 Q And everything you ever learned about</p> <p>10 the policy came from Scott Ellington; is that</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q And you -- and Scott Ellington told you</p> <p>14 that he had crafted the policy?</p> <p>15 A Again, there was a business purpose in</p> <p>16 terms of the entities winding down and ceasing to</p> <p>17 exist. I think they had been completely written</p> <p>18 off for tax purposes and the boards weren't in</p> <p>19 existence anymore, and there was no management in</p> <p>20 existence anymore and there was a business purpose</p> <p>21 to winding it down and crafting it as an insurance</p> <p>22 policy.</p> <p>23 Q My question was much simpler. My</p> <p>24 question was, is it true that Scott Ellington told</p> <p>25 you that he had crafted the policy?</p>

<p>33</p> <p>1 A Yes. I mean, whether it was him 2 directly or him working with reinsurance brokers 3 or him working with third parties, I don't know. 4 But he was the one that brought it to me or -- and 5 proposed the policy. 6 Q And what did Scott tell you about why 7 he was proposing the policy? 8 MR. TAYLOR: Objection. Form. Calls 9 for hearsay. 10 A I have answered this already, but, 11 again, that there was a business purpose that I'd 12 said already in terms of it was an illiquid pool 13 of assets that was cash deficient, cash deprived 14 that needed on a longer term basis liquidity and 15 an ability to fund legal fees and orchestrate 16 legal activities. Whether it was defensive or 17 offensive, I don't know. But it needed 18 functionality and it needed liquidity. 19 Q Did Scott tell you any other purpose 20 for why he was proposing the policy other than 21 what you've just described? 22 MR. TAYLOR: Objection. Form. 23 A That's the purpose as I understood it 24 and remember it. 25 Q What do you mean by "orchestrate legal</p>	<p>35</p> <p>1 then any -- you know, similarly, any business 2 issues or legacy issues, whether it's around -- 3 you know, UBS or Citibank or Barclays or any other 4 institutions that had conflict with HFP, you know, 5 there's, you know, a chance that that stuff could 6 be active again. 7 Q At the time the insurance policy was 8 taken out, you knew that HFP was in litigation 9 with UBS, correct? 10 A I don't know if that's true. I don't 11 know -- I don't remember. I don't remember -- I 12 don't remember if the UBS litigation was active or 13 real when the policy was taken out. It could have 14 been -- it might have been -- the UBS litigation 15 has been out there for a long time, but I don't 16 know specifically. 17 Q You know the policy was specifically -- 18 MR. CLUBOK: Strike that. 19 Q You know that part of the reason for 20 the policy was specifically to address the UBS 21 litigation; isn't that true? 22 A I would rather stay with the testimony 23 that I just gave. I understood it to be broadly 24 based to handle any residual activities on the 25 litigation or regulatory or tax side.</p>
<p>34</p> <p>1 activities"? What does that mean, as you used 2 that phrase? 3 A Well, again, there was no staff and no 4 board left and no functioning apparatus at HFP. 5 So it had no ability to operate or, you know, 6 defend itself or coordinate legal activities or 7 operating activities or if there was any residual 8 tax issue or anything. So the policy, like I 9 said, I believe remedied all that and provided 10 transition going forward. 11 Q Transition to what? 12 A Transition to going out of business or 13 ceasing to exist yet handling any residual 14 activities. 15 Q What were the residual activities of 16 HFP at that point? 17 A Again, I understood them just broadly 18 to be regulatory and legal and, you know, some 19 residual operating activities. You know, when -- 20 I mean, let's just take the tax thing, for 21 example. When you declare something ultimately 22 worthless and non-operating so that the investors 23 can take a write-off, the tax authorities can 24 question that or challenge that or litigate that, 25 and then you need to be able to defend it. And</p>	<p>36</p> <p>1 Q Did you know at the time the policy was 2 taken out whether or not, in some part, it was 3 directed specifically to address the UBS 4 litigation? 5 A I don't know. 6 Q You don't know if you knew or you 7 didn't know at the time? 8 A I don't know. I don't recall it 9 being -- I don't recall it being specifically to 10 UBS so I -- I don't recall that so I don't want to 11 say that. 12 Q Was there ever any analysis done to 13 indicate how the policy could fit into the 14 strategy for dealing with UBS in its litigation? 15 A Not that I saw. 16 Q Did Mr. Ellington ever tell you in any 17 words or substance how the policy could be used in 18 connection with dealing with the UBS litigation? 19 MR. TAYLOR: Objection. Calls for 20 hearsay. 21 A Again, my general understanding was to 22 provide liquidity and capability to wind down 23 legal issues that -- I believe, and the way it was 24 characterized in my memory is that none of the 25 legal issues were viewed as material. They were</p>

<p>37</p> <p>1 viewed as normal course resolutions of an entity 2 that was going out of business. So it wasn't -- 3 it wasn't in anticipation or because of one 4 particular thing. It was to handle liquidity and 5 functionality issues that the dead entity had.</p> <p>6 Q That wasn't my question. My question 7 is, did Mr. Ellington ever tell you in words or 8 substance how the policy could be used 9 specifically in connection with dealing with the 10 UBS litigation?</p> <p>11 MR. TAYLOR: Same objection. Calls for 12 hearsay.</p> <p>13 A The answer is no. Or no, not -- I 14 don't remember -- I have no recollection of it 15 being -- of him having any specific comments or 16 thoughts regarding the handling of the UBS 17 litigation via the policy.</p> <p>18 Q Did Mr. Ellington, at or around the 19 time the policy was being taken out, talk to you 20 about a strategy for settling the UBS litigation?</p> <p>21 MR. TAYLOR: Hold on. Before you 22 answer that, is Mr. Ellington an attorney at all?</p> <p>23 THE WITNESS: He is.</p> <p>24 MR. TAYLOR: So I'm going to have to 25 ask that he not disclose -- first of all, it calls</p>	<p>39</p> <p>1 agreement? For instance, would he help you in 2 your role as one of the advisors or for Sentinel 3 Reinsurance and give those entities counsel also?</p> <p>4 THE WITNESS: I mean, yeah. I mean, 5 besides working for various entities, he did give 6 me legal advice often, too.</p> <p>7 MR. TAYLOR: So, Andy, based upon that, 8 we've got to assert the privilege. I don't know 9 exactly all of the roles Mr. Ellington may have 10 been filling, but if he was filling other types of 11 roles under a shared services agreement or other, 12 that advice could have been to other clients, some 13 of which are not Highland Capital entity ones, and 14 he can't answer those questions.</p> <p>15 MR. CLUBOK: Okay. Hold on a second 16 here.</p> <p>17 Q Mr. Dondero, did Mr. Ellington ever 18 give legal advice to Sentinel Reinsurance, as far 19 as you know?</p> <p>20 A I'm sure he did, actually. I mean, I 21 think that was part of his role and function in 22 Sentinel.</p> <p>23 Q You think as part of his role and 24 function in Sentinel, he was an attorney in 25 addition to a part owner, giving legal advice to</p>
<p>38</p> <p>1 for hearsay, and, second of all, it invades the 2 attorney-client privilege and I'm instructing him 3 not to answer.</p> <p>4 MR. CLUBOK: Hold on a second. I 5 believe --</p> <p>6 Q Mr. Dondero, Mr. Ellington at the time 7 was the general counsel of Highland Capital 8 Management, correct?</p> <p>9 A Yes.</p> <p>10 MR. CLUBOK: And the privilege, I 11 believe, belongs to Highland Capital Management, 12 who is here being represented by Mr. Feinstein.</p> <p>13 Mr. Feinstein --</p> <p>14 MR. FEINSTEIN: Right. And we are not 15 asserting it as to conversations that in-house 16 counsel had with anyone on this topic.</p> <p>17 MR. TAYLOR: And just so I'm clear, did 18 Mr. Ellington have any other roles as counsel for 19 you in any other capacity in non-Highland Capital, 20 other than as a debtor? Did he advise you in any 21 of your other roles for --</p> <p>22 THE WITNESS: I mean, yeah, he has 23 helped out on a lot of different things. Yes.</p> <p>24 MR. TAYLOR: So the record is clear, 25 was Mr. Ellington under the shared services</p>	<p>40</p> <p>1 Sentinel Reinsurance, a Cayman-based company; is 2 that correct?</p> <p>3 A Yes.</p> <p>4 Q And did you ever receive any legal 5 advice from Scott Ellington that was specifically 6 directed at Sentinel Reinsurance, as far as you 7 know?</p> <p>8 A I did not receive it, no. I mean, 9 yeah, no, I don't have specific awareness.</p> <p>10 Q Okay. So this particular 11 conversation -- when Mr. Ellington came to you and 12 said, we're going to -- came to you to talk to you 13 about the policy, he was not speaking to you as a 14 representative of Sentinel Reinsurance, correct?</p> <p>15 A I don't know. I can't say because --</p> <p>16 Q Well, let me ask it slightly 17 differently. When you considered -- you approved 18 the policy, correct?</p> <p>19 A Yeah, I approved of him moving forward 20 with the policy, yes.</p> <p>21 Q And did you approve on behalf of 22 Sentinel Reinsurance with Mr. Ellington moving 23 forward with the policy?</p> <p>24 A No. He just -- he ran it by me as a 25 solution and a business idea.</p>

Transcript of James Dondero
Conducted on May 10, 2021

11 (41 to 44)

<p>41</p> <p>1 Q Okay. And he ran that by you -- okay. 2 So as a solution as a business idea -- 3 so as a solution as a business idea, did 4 Mr. Ellington tell you in words or substance that 5 the policy would assist in a strategy for settling 6 the UBS litigation? 7 MR. TAYLOR: Objection. Calls for 8 hearsay. And just because something is a business 9 solution doesn't mean it doesn't have legal 10 aspects, Andy. So, again, we have the 11 attorney-client privilege. 12 MR. CLUBOK: And, specifically, 13 Mr. Taylor, what's the attorney-client privilege 14 that you are claiming? In what capacity was 15 Mr. Ellington acting as an attorney and in what 16 capacity is Mr. Dondero receiving statements from 17 him that is causing you to assert the privilege on 18 this particular line of questioning? 19 MR. TAYLOR: So it's my understanding, 20 and Mr. Dondero can correct me if I'm wrong, that 21 Mr. Ellington under the shared services agreement 22 not only provided legal services directly to 23 Highland Capital Management but also to other 24 subsidiaries that are not owned nor controlled by 25 Highland Capital as we sit here today, and I am</p>	<p>43</p> <p>1 Mr. Ellington was acting on behalf of and that you 2 have the right to instruct Mr. Dondero not to 3 answer. That's what I want to get to. I'm 4 looking at this realtime. I don't see any 5 specific entities mentioned. You are just saying 6 you assume that or you generally think that may be 7 and et cetera. 8 MR. TAYLOR: It could be Sentinel 9 Reinsurance, Andy. 10 MR. CLUBOK: Sentinel Reinsurance -- he 11 just said that he was not accepting -- he was not 12 acting on behalf of Sentinel Reinsurance when 13 Mr. Ellington gave him this suggestion. 14 Do you represent Sentinel Reinsurance? 15 MR. TAYLOR: I do not, but I can't let 16 my client waive their privilege. 17 MR. CLUBOK: Okay. 18 Q Did you -- Mr. Dondero, did you -- by 19 the way, Mr. Dondero, what are you looking at 20 right now? 21 A My thumbnails. 22 Q No, you weren't looking at your 23 thumbnails. Is that it? You weren't -- 24 MR. TAYLOR: Andy -- 25 A I was looking at my thumbnails.</p>
<p>42</p> <p>1 merely asking that Mr. Dondero carefully consider 2 whether any of those services were legal services 3 directed to non-Highland Capital Management 4 entities. That is it. 5 I don't know exactly what might or 6 might not have been said. First of all, it calls 7 for hearsay, but, second of all, to the extent 8 that there was any legal advice rendered to any 9 non-Highland Capital Management entity that is not 10 controlled by Highland Capital today, I believe 11 you have to assert the attorney-client privilege, 12 Andy. 13 MR. CLUBOK: Okay. So two things. 14 First of all, just generally speaking, I'm going 15 to ask you to stop making hearsay objections. You 16 know those are preserved. You don't have to make 17 them at a deposition. In fact, you're not allowed 18 to under the federal rules. So I'm just going to 19 ask you to stop continually making hearsay 20 objections, please. Those objections, as you know 21 well, are preserved. You make form and foundation 22 objections, other than privilege. 23 Second of all, with respect to the 24 privilege, I am asking you for -- you cannot name 25 a specific entity that you are asserting that</p>	<p>44</p> <p>1 MR. TAYLOR: -- I can represent to you 2 he is not holding anything in his hands, 3 electronic, paper or otherwise. 4 MR. CLUBOK: Mr. Dondero -- Mr. Dondero 5 has already testified that he received no legal 6 advice on behalf of Sentinel Reinsurance from 7 Scott Ellington. So do you have any others that 8 you are claiming other than Sentinel Reinsurance 9 that Mr. Ellington supposedly gave advice on 10 behalf of in this conversation that I was asking 11 Mr. Dondero about, that you're instructing on 12 their behalf Mr. Dondero not to answer? 13 MR. TAYLOR: I'm just representing 14 Mr. Dondero individually. There could be other 15 entities. I believe there's three different 16 entities to whom you directed litigation hold 17 letters. I'm not representing those, but to the 18 extent any of those other two -- one of them had 19 the name Sentinel in them and one did not. 20 To the extent that any of those 21 entities received legal advice from Mr. Ellington 22 and that was legal advice, he can't answer to 23 those entities either. He can't waive their 24 privilege. 25 MR. CLUBOK: Okay. What entity -- name</p>

<p>45</p> <p>1 an entity other than -- are you asserting a 2 privilege on behalf of Sentinel Reinsurance even 3 in light of what Mr. Dondero has testified under 4 oath? Yes or no? 5 MR. TAYLOR: I'm asking him to consider 6 that he cannot waive those privileges on behalf of 7 those entities. 8 MR. CLUBOK: Okay. You're asking him 9 to consider. You're not -- are you instructing 10 him not to answer on behalf of Sentinel 11 Reinsurance? I just -- you did before. 12 MR. TAYLOR: It's impossible to answer, 13 Andy, because I don't know exactly what was told 14 to him. I don't know -- 15 MR. CLUBOK: Are you instructing him 16 not to answer, Clay? 17 MR. TAYLOR: I'm instructing him not to 18 answer if he got any legal advice on behalf of any 19 of those entities. 20 MR. CLUBOK: Okay. All right. 21 Q So I'm going to go back to my question 22 then, Mr. Dondero. 23 Well, first of all, you didn't get 24 legal advice on behalf of Sentinel Reinsurance in 25 this conversation with Scott Ellington about</p>	<p>47</p> <p>1 services agreement with Sentinel Reinsurance and 2 any other Highland entity? 3 A I don't know. I don't know if there 4 was a formal one there. There were formal shared 5 services agreements and then there were informal 6 shared services agreements. 7 Q Are you aware, sitting here today, of 8 any formal shared services agreements with 9 Sentinel Reinsurance and any other Highland 10 entity? 11 A I don't know. 12 Q You don't know if you are aware or, as 13 you sit here today, it's true that you're not 14 aware of any such shared services agreement 15 between Sentinel Reinsurance and Highland; isn't 16 that true? 17 A I -- I don't know, meaning I don't have 18 awareness, but I'm -- and I don't want that to 19 imply that there is or isn't one. I don't know. 20 Q So getting back to Mr. Ellington, when 21 he first broached you -- so I want to understand 22 this. He broached you. At that time you were the 23 president of Highland Capital Management, correct? 24 A Yes. 25 Q And you were the sole director of --</p>
<p>46</p> <p>1 establishing the policy, correct? 2 A Did I get -- I'm sorry, did I get legal 3 advice from Scott Ellington regarding -- 4 Q Was he acting as your lawyer with 5 respect to Sentinel Reinsurance or was he acting 6 as your lawyer with respect to Highland Capital 7 and the other funds? 8 A I mean, I think he's always wearing 9 multiple legal hats. 10 Q Did you think at the time he broached 11 this policy with you he was wearing a legal hat 12 with respect to Sentinel Reinsurance? 13 A Yes, and with regard to Highland also. 14 Q You think -- so you were -- were you -- 15 you were receiving legal advice from Scott 16 Ellington in your capacity as a majority owner of 17 Sentinel Reinsurance when he first broached you 18 about this policy? 19 A I think he was wearing a hat -- a legal 20 hat from a Sentinel perspective in terms of 21 structuring and understanding the policy, in order 22 to achieve the business purpose that he was trying 23 to achieve, that he then had to run through 24 Highland compliance. 25 Q So wait a second. Was there a shared</p>	<p>48</p> <p>1 MR. CLUBOK: Strike that. 2 Q You were in control of what was left of 3 Highland Financial Partners and its subsidiaries, 4 correct? 5 A I don't know if it was me or Highland, 6 but we were trying to take a leadership role in 7 winding that entity down. 8 Q You, Jim Dondero, were the decision 9 maker for what was left of Highland Financial 10 Partners and its subsidiaries at the time 11 Mr. Ellington approached you about this insurance 12 policy, correct? 13 A Generally. 14 Q And when Mr. Ellington talked to you 15 about this insurance policy, you say he was 16 wearing many legal hats. Was one of the legal 17 hats he was wearing, to your knowledge, as a legal 18 advisor to Sentinel reinsurance? 19 A I believe so. 20 Q And was one of the legal hats that he 21 was wearing when he approached you about the 22 insurance policy as a legal advisor to Highland 23 Capital Management? 24 A I believe so. 25 Q And was one of the legal hats that</p>

<p>49</p> <p>1 Mr. Ellington was wearing when he approached you 2 about this insurance policy was as a legal advisor 3 to Highland Financial Partners? 4 A I believe so. 5 Q And was one of the legal hats that 6 Mr. Ellington was wearing when he approached you 7 with respect to this insurance policy was as a 8 legal advisor to all of Highland Financial 9 Partners subsidiaries? 10 A I -- I believe so. 11 Q And was one of the legal hats that 12 Mr. Ellington was wearing when he approached you 13 with respect to the insurance policy a legal 14 advisor to Highland CDO Fund and its subsidiaries? 15 A I -- I don't know if that was relevant 16 or if I had any -- I don't know if that was 17 relevant -- we've had a lot of names that are 18 similar. I'm not even sure what fund that is, per 19 se, but I don't remember that one specifically. 20 MR. CLUBOK: By the way, just for the 21 record, I know it is hard to -- in the rough -- 22 this is CD -- as in David -- O Fund, CDO Fund. 23 THE WITNESS: Okay. Yeah, I -- 24 MR. CLUBOK: I think the court reporter 25 heard me say CEO Fund, or at least that's the way</p>	<p>51</p> <p>1 asserting the privilege. So I'm going to ask the 2 question, given the record that we have just heard 3 one more time and ask, did Scott Ellington, in 4 words or substance, ever mention dealing with UBS 5 as one of the business reasons for entering into 6 the insurance policy that we're here to discuss? 7 MR. TAYLOR: And, Andy, I'm going to 8 make my objection but tell Mr. Dondero it's the 9 same objection, attorney-client privilege, but 10 subject thereto, given the foundation you laid, 11 that you can answer subject to my objection. 12 A Okay. I'd like to get -- can I have an 13 uninterrupted 30-second moment to describe 14 contextually and answer your question in a way 15 that I think connects everything together? If I 16 can go on -- 17 Q You can do that. I may go back and ask 18 my question again if you don't answer it, but go 19 ahead. 20 A Okay. 21 We filed in October '19. In August of 22 '19, Ellington and I believed we had a handshake 23 agreement with UBS to settle all outstanding 24 issues and get back to most favored nation status 25 instead of our real estate group, that has been</p>
<p>50</p> <p>1 it came out on the rough. 2 Q So I just -- I want to make sure that 3 you know, Jim, I'm saying Highland CDO Fund. Have 4 you heard of that? 5 A Yeah, I don't remember what fund that 6 is. 7 Q Are you aware that UBS obtained a 8 judgment against two funds that you formerly were 9 involved with? 10 A Are you talking about the recent 11 judgment? 12 Q Yes, the recent judgment. 13 A Yes. 14 Q And who was that judgment against, do 15 you know? 16 A I do not. 17 Q Do you have any idea who are the 18 parties that are responsible for the 19 billion-dollar judgment that UBS obtained? 20 A I do not. 21 Q Getting back to Mr. Ellington, I will 22 say that, at a bare minimum, if this conversation 23 was privileged, it was a joint privilege and we 24 have a representative of Highland Capital 25 Management here, who have said they are not</p>	<p>52</p> <p>1 growing aggressively and would have nice business 2 reasons to do business with UBS -- instead of both 3 firms not doing business together, we believed we 4 had a handshake agreement with UBS that, Andy, you 5 were involved in. And we believed that that 6 agreement was for 7 million of cash and 10 million 7 of future business. 8 And it wasn't that we thought those 9 monies were for justified damages to UBS for 10 whatever cases were outstanding in the past 11 because we truly believed we had paid for releases 12 from UBS twice. We felt like we had paid 13 120 million in securities in 2008 or 2009, and 14 then we felt via the 2015 Redeemer settlement -- 15 Redeemer and Credit Strat settlement of 72 million 16 or \$77 million, we felt like we had paid for the 17 same releases from UBS twice, and we believed that 18 we had no liabilities whatsoever with UBS, and we 19 believed that the ongoing litigation was just a 20 cloud over the firm's doing business, and it was 21 worth us paying \$7 million of cash and 10 million 22 of future business to put it behind us. 23 So our frame of mind in August of 24 2019 -- our frame of mind, meaning my frame of 25 mind and Ellington's frame of mind -- was that the</p>

<p>53</p> <p>1 UBS claims were de minimis, but it was worth 2 paying seven of cash and ten million of future 3 business to put it behind us. 4 The case had been dormant for an 5 extended period of time. And when I say "an 6 extended period of time," it would be in the years 7 prior to 2019, incorporating when this reinsurance 8 policy was done at Sentinel. So the reinsurance 9 policy, when it was done at Sentinel, was done to 10 wrap up the HFP issues in aggregate, including all 11 legal, regulatory, compliance, tax, operating 12 issues, et cetera. 13 It wasn't done in anticipation of or 14 trying to circumvent or prepare for some big UBS 15 judgment because at that period of time, we truly, 16 and, I think, UBS truly thought that their claims 17 were zero or de minimis because as recently as 18 August of 2019 we had a handshake agreement to 19 settle them for 7 million in cash and 10 million 20 of future business, which is de minimis in the 21 overall scheme of things and de minimis relative 22 to HFP or the Sentinel policy, et cetera. 23 So that's my overall testimony on the 24 subject, and I don't know much more beyond that. 25 Q Okay. Let me go back to the question I</p>	<p>55</p> <p>1 world that reflect that supposed handshake 2 agreement? 3 A You know, Andy, I believe -- I know I 4 heard it from Seery or from UCC -- or not UCC -- 5 from independent board members or from the 6 mediators last year, that there was a point in 7 time where you admitted that there was a handshake 8 agreement, but -- on those numbers at that time, 9 but that was then and this is now, and now you 10 guys have a different view and you also have a New 11 York action. 12 And I -- so I don't have -- I don't 13 have anything written that's been put in front of 14 me, but I do believe there are people who will say 15 that you admitted that occurred. You were 16 involved with the Indian guy who came over from 17 London. You were involved with the meetings with 18 Ellington. I -- but I don't have anything in 19 writing to support it. 20 Q My question is, are you aware of any 21 document in the world that reflects the supposed 22 handshake agreement from August of 2019 that you 23 just described? 24 A I do not. I do not have such a paper. 25 Q Are you aware of any such documents in</p>
<p>54</p> <p>1 asked you and then we'll cover some of the things 2 you just said. 3 So, first of all, you're talking about 4 October of -- you said, "October of '19 we filed." 5 You mean you filed for bankruptcy in October of 6 '19? 7 A Highland filed, I think, on 8 October 16th of 2019. 9 Q Okay. You -- Highland Capital 10 Management filed for bankruptcy on October 16th, 11 2019, correct? 12 A Correct. 13 Q And you claim that in August of 2019, 14 just a few months before that, there was a 15 handshake deal with UBS to settle all outstanding 16 matters. Is that your claim? 17 A Yes. 18 Q And have you seen any documents that 19 support that claim? 20 MR. TAYLOR: Objection. Form. 21 MR. CLUBOK: Withdrawn. 22 Q Have you seen any documents that 23 reflect that supposed handshake agreement? 24 A No, I have not. 25 Q Are you aware of any documents in the</p>	<p>56</p> <p>1 the world, even if you don't have them, that 2 reflect the supposed handshake agreement from 3 August of 2019 that you just described? 4 A I do not. I do not have them and I do 5 not have awareness of them. 6 Q Now, you claim -- now, you claim that 7 Jim Seery told you that there had been an 8 agreement from August of 2019? 9 A No, no, no. And I'm not sure it was 10 Seery or somebody else under -- 11 Q Let's start with Jim Seery, okay. You 12 said that -- so did Jim Seery, in words or 13 substance, ever tell you that there was a 14 handshake agreement in August of 2019 along the 15 lines that you've just described? 16 A It was -- my recollection is it was 17 either Jim Seery or somebody else on the 18 independent board -- 19 Q Okay. 20 A -- said that subsequent, meaning in -- 21 sometime in 2020, around the arbitration or 22 mediation, I believe, that you admitted to people 23 or to the arbitrators that there was an agreement 24 in principle but it hadn't been finalized or 25 documented, but that was then and this is now.</p>

<p>57</p> <p>1 Q Okay. The other independent board</p> <p>2 members were John Dubel and Judge Russ Nelms; is</p> <p>3 that right?</p> <p>4 A Yes.</p> <p>5 Q So it's your testimony that either Jim</p> <p>6 Seery or John Dubel or Russell Nelms told you that</p> <p>7 there had been a handshake deal in August of 2019</p> <p>8 along the lines of what you've just described. Is</p> <p>9 that your testimony?</p> <p>10 A Yes.</p> <p>11 Q And you can't remember which of those</p> <p>12 three supposedly told you this, correct?</p> <p>13 A Correct.</p> <p>14 Q Okay. Now, other than the supposed</p> <p>15 conversation between one of these three directors</p> <p>16 about this supposed deal, had you ever heard of</p> <p>17 that supposed handshake deal before that time?</p> <p>18 A Well, from Scott Ellington, who</p> <p>19 negotiated with you and the guy from London.</p> <p>20 Q Okay. So Scott Ellington told you that</p> <p>21 there was a handshake deal in August of 2019</p> <p>22 whereby you would pay \$7 million and \$10 million</p> <p>23 of additional business to resolve all the claims</p> <p>24 that UBS had against Highland and the affiliated</p> <p>25 funds? Is that your testimony?</p>	<p>59</p> <p>1 or London, but we do have calendar documentation</p> <p>2 of you guys' meeting, I'm sure we do.</p> <p>3 Q And --</p> <p>4 A Andy, listen, I know I can't enforce a</p> <p>5 handshake agreement. You know, my life would be</p> <p>6 easier and we would have a nice residual value to</p> <p>7 Highland if I could force the handshake agreement</p> <p>8 to be reality. I know I can't force it, but what</p> <p>9 I'm trying to just lay the ground work of is that</p> <p>10 we never viewed the UBS claims -- prior to you</p> <p>11 getting the judgment out of the judge in New York,</p> <p>12 we never viewed the UBS claims as material or</p> <p>13 significant until then.</p> <p>14 Q Well, prior to then, you knew that if</p> <p>15 UBS were to win its case, the consequences for</p> <p>16 Highland could be catastrophic, correct?</p> <p>17 A No, we never viewed them as a material,</p> <p>18 legitimate claim. We believe we had paid for the</p> <p>19 releases twice before. I don't know what happened</p> <p>20 in New York, and I haven't looked at the case. I</p> <p>21 don't know what she actually awarded. I don't</p> <p>22 know if we were properly represented or if it was</p> <p>23 done. I don't know if it's appealable. I don't</p> <p>24 know what the New York Circuits represents.</p> <p>25 But I'm just saying that prior to that</p>
<p>58</p> <p>1 A Yes, correct.</p> <p>2 Q And did Mr. -- when did Mr. Ellington</p> <p>3 tell you this?</p> <p>4 A At or about when he came back from the</p> <p>5 meeting with you and the guy from India -- or you</p> <p>6 and the Indian guy from London.</p> <p>7 Q And this was in August of 2019?</p> <p>8 A Yes.</p> <p>9 Q And did Mr. Ellington give you any more</p> <p>10 specifics about this supposed handshake deal?</p> <p>11 A Those were the primary business points</p> <p>12 I remember. I don't remember others.</p> <p>13 Q Did Mr. Ellington tell you who shook</p> <p>14 hands on this deal, supposedly?</p> <p>15 A I don't know the name of the Indian</p> <p>16 guy, but I know -- we do have the calendar</p> <p>17 meetings that you attended, he attended, the</p> <p>18 Indian guy attended, you know, et cetera, but I</p> <p>19 don't know his name off the top of my head.</p> <p>20 Q Sorry, you have calendar meetings?</p> <p>21 Where?</p> <p>22 A No, no, I mean, they were orchestrated</p> <p>23 meetings, Andy. I mean, you, Scott, the guy from</p> <p>24 UBS from -- I think he was from London. I don't</p> <p>25 remember whether you had the meeting in New York</p>	<p>60</p> <p>1 judgment coming around, we did not believe, and I</p> <p>2 don't believe you believed either in August of '19</p> <p>3 that the UBS claims were material up until that</p> <p>4 point. But congratulations on getting a big award</p> <p>5 out of New York.</p> <p>6 Q Your testimony is that prior to the</p> <p>7 time the judgment was awarded, you never believed</p> <p>8 there was any possibility of UBS obtaining more</p> <p>9 than, say, \$7 million in total from its lawsuit</p> <p>10 that was pending in New York; is that correct?</p> <p>11 A That's right, 7, 10, 5, 20, I mean,</p> <p>12 something de minimis, something nominal, you</p> <p>13 know -- I mean, there's always a risk that it --</p> <p>14 you know, just like, you know, we -- Highland went</p> <p>15 into bankruptcy and there were 110 million of</p> <p>16 claims that have now ballooned to 300, you know.</p> <p>17 So, you know, things can always go awry, but yes,</p> <p>18 that was our opinion.</p> <p>19 Q So your opinion was there was never a</p> <p>20 realistic possibility of the total liability in</p> <p>21 connection with the UBS legal action in New York</p> <p>22 ever being more than, say, 10 or \$20 million,</p> <p>23 correct?</p> <p>24 A We thought it was something that --</p> <p>25 like any other potential or lingering claim from</p>

<p>61</p> <p>1 UBS or Barclays or from Citibank or from 2 regulators or from tax authorities, you know, we 3 thought they were all normal course of business 4 that would be resolved for not material amounts of 5 money, correct.</p> <p>6 Q And when you say "we," who is the "we" 7 in that sentence? Are you speaking on behalf of 8 Highland Capital Management, are you speaking on 9 behalf of Sentinel Reinsurance or on behalf of HFP 10 or all of the above?</p> <p>11 A All of the above. And I think that was 12 Ellington's view also, and that's why it made 13 sense to transition an otherwise dead entity via 14 the insurance policy.</p> <p>15 Q What is the insurance -- okay. So 16 getting back to my original question, what, if 17 anything, did Mr. Ellington ever tell you, at the 18 time the insurance policy was being considered, 19 with respect to how it would impact the UBS 20 litigation?</p> <p>21 A I mean, like I said, there wasn't -- it 22 wasn't a specific concern regarding UBS. It was 23 to handle the transition of an otherwise dead 24 entity that was illiquid that still had operating 25 issues without a board and without any management</p>	<p>63</p> <p>1 you don't, I'll continue going. So it's up to 2 you.</p> <p>3 THE WITNESS: You know what, I have -- 4 at 11:30 I need half an hour. I have got a 5 half-hour meeting I can't move.</p> <p>6 MR. CLUBOK: Okay. If that's the case, 7 then let's keep going for another 11 minutes.</p> <p>8 THE WITNESS: Yes.</p> <p>9 MR. CLUBOK: Okay. Let's continue 10 going, then.</p> <p>11 Is that okay, Clay?</p> <p>12 MR. TAYLOR: Yes.</p> <p>13 THE WITNESS: Yes.</p> <p>14 MR. CLUBOK: Okay.</p> <p>15 So -- we're going to just -- I just 16 want to show you a copy of the subpoena we issued 17 for your testimony today.</p> <p>18 If you could put that up, and I believe 19 we'll mark it as Exhibit 23.</p> <p>20 (Deposition Exhibit 23 marked for 21 identification.)</p> <p>22 REMOTE TECH: Pardon me, Counsel, which 23 tab is that?</p> <p>24 MR. CLUBOK: It was something 25 Ms. George just sent you, probably the last thing</p>
<p>62</p> <p>1 team and without any way to pay anybody. It was a 2 way to transition all issues, but it wasn't 3 anything specific to UBS that I recall at the 4 time.</p> <p>5 Q Okay. So when you -- and we jumped -- 6 you jumped ahead and started talking about August 7 '19, but the policy was taken out, you know, 8 approximately four years or so ago. So let's say 9 2017.</p> <p>10 A Okay.</p> <p>11 Q Back in 2017, you're saying, the policy 12 was not in any way specifically directed at UBS, 13 correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. And the policy back in 2017 was 16 not issued with the UBS litigation in mind, 17 correct?</p> <p>18 A Yes, that's correct.</p> <p>19 Q And in -- and Mr. Ellington never 20 raised how the policy could impact the UBS 21 litigation when he gave you the business reasons 22 for taking out the policy, correct?</p> <p>23 A Correct.</p> <p>24 MR. CLUBOK: I think this might be a 25 good time to take a break, if you want one. If</p>	<p>64</p> <p>1 she sent you, two documents. One is the subpoena 2 and one is Mr. Dondero's response via counsel.</p> <p>3 REMOTE TECH: Please stand by.</p> <p>4 MR. TAYLOR: Andy, why are we -- just 5 for my curiosity, why are we starting with 23?</p> <p>6 MR. CLUBOK: Because we're 7 continuing -- we've already marked some exhibits 8 in this action. So, you'll see, we'll go through 9 Exhibits 1 and 2 and 3 later, but they have 10 already been marked in previous depositions.</p> <p>11 MR. TAYLOR: Okay.</p> <p>12 MR. CLUBOK: We're just -- we're trying 13 to keep one set instead of starting every 14 deposition over at 1, which gets very confusing. 15 Then you have, like, ten Exhibit 1s.</p> <p>16 MR. TAYLOR: Understood. Thank you.</p> <p>17 MR. CLUBOK: Sure.</p> <p>18 Q So here is Exhibit 23. This is Exhibit 19 23 for this action. And Exhibit 23 is a copy of 20 the Subpoena to Produce Documents, Information, or 21 Objects or to Permit Inspection of Premises in a 22 Bankruptcy Case. Do you see that?</p> <p>23 A Yes.</p> <p>24 Q And have you seen that subpoena before 25 today?</p>

Transcript of James Dondero
Conducted on May 10, 2021

17 (65 to 68)

<p>65</p> <p>1 A I believe so.</p> <p>2 Q And if I could have control of it,</p> <p>3 Jordan.</p> <p>4 REMOTE TECH: One moment, please.</p> <p>5 All right. Sir, I've given you</p> <p>6 control. If you could just click on your screen.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q And so you say you believe you have</p> <p>9 seen this Exhibit 23. Are you sure you have seen</p> <p>10 it?</p> <p>11 A I think it was stapled to -- wasn't it</p> <p>12 part of everything else that was sent over? But</p> <p>13 this is what covers discovery requests, right?</p> <p>14 Q Correct.</p> <p>15 A Yeah.</p> <p>16 Q And, in particular, there was an</p> <p>17 attachment or a page that I have got on the screen</p> <p>18 now. It starts with Roman numeral III. It says,</p> <p>19 "Documents to be produced."</p> <p>20 A Yes.</p> <p>21 Q And did you review Roman numeral III</p> <p>22 and the 12 categories of documents that you were</p> <p>23 under subpoena to produce?</p> <p>24 A Yes.</p> <p>25 Q And did you make an effort to locate</p>	<p>67</p> <p>1 MR. CLUBOK: No. I'll have to -- I'll</p> <p>2 assess during the break and see if I can get an</p> <p>3 estimate. We have another break that we have to</p> <p>4 take, too. What time is the hear- -- is there a</p> <p>5 hearing still set for today?</p> <p>6 MR. TAYLOR: 1:30, and yes.</p> <p>7 MR. CLUBOK: Is that substantive or</p> <p>8 just a call?</p> <p>9 MR. TAYLOR: We just have to dial in,</p> <p>10 but both of us have to be there, both he and I.</p> <p>11 MR. CLUBOK: I'm just saying, it's</p> <p>12 supposed to be a short meeting, I take it?</p> <p>13 MR. TAYLOR: Actually, I think it might</p> <p>14 be a little more substantive, but I'm not sure.</p> <p>15 It's a docket call and we do have a motion for</p> <p>16 continuance which will be argued. So I'm just not</p> <p>17 sure how long it's going to take, 30 minutes to an</p> <p>18 hour, my guesstimate.</p> <p>19 MR. CLUBOK: Okay.</p> <p>20 If I can have the control too, Jordan,</p> <p>21 please.</p> <p>22 Thank you.</p> <p>23 Q Mr. Dondero, I've got up here an e-mail</p> <p>24 from Roland Schafer to Andrew Clubok and Katie</p> <p>25 George, copying Clay Taylor and Bryan Assink, with</p>
<p>66</p> <p>1 documents responsive to that subpoena?</p> <p>2 A Yes.</p> <p>3 MR. CLUBOK: And we're going to put up</p> <p>4 what we're going to mark as Exhibit 24. It is a</p> <p>5 response that we received to the subpoena last</p> <p>6 week.</p> <p>7 REMOTE TECH: Please stand by.</p> <p>8 (Deposition Exhibit 24 marked for</p> <p>9 identification.)</p> <p>10 Q It is a May 6th, 2021 e-mail from</p> <p>11 Schafer to Clubok.</p> <p>12 MR. TAYLOR: We're not seeing that,</p> <p>13 Andy.</p> <p>14 MR. CLUBOK: It will just take a</p> <p>15 second. I think Jordan is putting it up. There's</p> <p>16 a little bit of a lag with this process. I'm not</p> <p>17 seeing it either, for what it's worth.</p> <p>18 REMOTE TECH: Counsel, I apologize. I</p> <p>19 have to get this downloaded real quick.</p> <p>20 MR. CLUBOK: No problem. Take your</p> <p>21 time. I was just explaining to Clay.</p> <p>22 MR. TAYLOR: Andy, for planning</p> <p>23 purposes while we wait, do you have any idea how</p> <p>24 late you're thinking, how many hours more you</p> <p>25 need?</p>	<p>68</p> <p>1 the subject, "Dondero Subpoena."</p> <p>2 Have you seen this document before?</p> <p>3 A Yes.</p> <p>4 Q And it's been marked as Exhibit 24. In</p> <p>5 Exhibit 24 Mr. Schafer says that they have</p> <p>6 completed their "search of the e-mail/documents to</p> <p>7 which we have access. Keep in mind that</p> <p>8 Mr. Dondero was exclusively on the HCMLP e-mail</p> <p>9 until December 30th, 2020." He now has a NexBank</p> <p>10 e-mail account and beginning in late March 2021 he</p> <p>11 moved to NextPoint e-mail. Or he had a NexBank</p> <p>12 e-mail account, I should say, in the beginning of</p> <p>13 late March 2021. And he said that the only</p> <p>14 documents are communications between yourself and</p> <p>15 his law firm, and that's it, that in any way are</p> <p>16 responsive to the subpoena request we issued.</p> <p>17 I'm paraphrasing, but that's the gist</p> <p>18 of what it said, correct?</p> <p>19 A Yes.</p> <p>20 Q And is that the case, that you have</p> <p>21 absolutely no access to or control over or ability</p> <p>22 to obtain any document that is in any way</p> <p>23 responsive to Exhibit number 23 other than</p> <p>24 communications with your attorneys?</p> <p>25 A That is correct.</p>

<p>69</p> <p>1 MR. CLUBOK: Okay. Let's see. Thank 2 you. Jordan, we can take that off the screen. 3 Okay. 4 Q Let me just see if I can do a couple 5 more quick things here before your 12:30. 6 Other than this -- 7 MR. CLUBOK: Well, strike that. 8 Q Other than the insurance policy that's 9 the subject of this litigation that we have been 10 talking about, I think you said that you 11 understood that Sentinel had issued policies such 12 as D&O insurance and title reinsurance, correct? 13 A Yes. 14 Q For the D&O insurance, who were the 15 insureds that you are aware of that Sentinel 16 Reinsurance issued policies for? 17 A I mean, some of them were completely 18 third party. I think some of them were the back 19 end of related D&O insurance, you know, where 20 somebody like an Aon or somebody would take the 21 first, would take 60 percent of premium, would be 22 the face of the premium, and take the first X 23 dollars of loss, and then Sentinel would take the 24 back half. Or maybe it was the reverse, where 25 Sentinel would take the first piece of the loss</p>	<p>71</p> <p>1 I'm just saying as far as business or policies 2 that Sentinel issued or was part of, there were -- 3 there were multiple types. 4 Q Right. But to be clear, Sentinel Re is 5 affiliated with you, Jim Dondero, correct? 6 A If you define affiliate as similar 7 ownership, then yes, yeah. 8 Q Okay. And Sentinel Re did issue 9 policies to other entities that have overlapping 10 ownership with you, correct? 11 A Correct. 12 Q And what were those entities that 13 Sentinel Re issued policies to that you were in 14 some way connected to? 15 A Like I said, I believe they did some 16 D&O insurance splitting on some of the private 17 equity companies in the portfolio. 18 Q Like what? 19 A I don't remember, and I don't know 20 which ones they did, but I remember that was a 21 business line or a business purpose for a few 22 years. 23 Q Is there any entity that you can name 24 here today that Sentinel Reinsurance issued a 25 policy to that you have some beneficial interest</p>
<p>70</p> <p>1 and Aon would take the back piece. But it was 2 splitting -- it was splitting policies with some 3 major carriers. 4 Q Sorry. So when you use that phrase 5 "completely third party," using that phrase, would 6 you say that Sentinel Reinsurance is a completely 7 third-party entity? 8 A No -- is it completely third party, no. 9 But to be a bona fide reinsurer in Cayman, Cayman 10 doesn't want reinsurance companies or banks to be 11 captive or not be legitimately in the insurance or 12 banking business. So you have to have a portfolio 13 or a certain amount of legitimate insurance and 14 reinsurance from a variety of players. 15 Q Okay. But Sentinel Re is an affiliate 16 of yours, correct? 17 A Affiliate in terms of similar 18 ownership, I guess, you know. 19 Q If I just asked you generically, it's 20 Sentinel Re third-party -- how did you use the 21 phrase? I'm sorry. If I said is Sentinel Re a 22 completely third-party entity to you, Jim Dondero, 23 you would say no, that's not true, correct? 24 A Well, I would say there is the 25 beneficial ownership that we have spoken of, but</p>	<p>72</p> <p>1 in? 2 A You'll have to ask Scott. Scott 3 Ellington is the right person to ask. 4 Q How about you? As you sit here today, 5 are you aware of even a single entity that you can 6 think of -- are you claiming that you don't know a 7 single entity that Sentinel Re issued a policy to 8 that you have a beneficial ownership in? 9 A No, I don't remember. I don't remember 10 specifically. 11 Q Do you know what proportion of Sentinel 12 Re's business was issuing policies to entities 13 that had some sort of connection to you? 14 A I do not. 15 Q Okay. Well, look, it's 11:30. I will 16 say, we weren't told about this break. We also 17 obviously weren't told we were going to start a 18 half hour late. So we're going to -- it's going 19 to end up becoming a long day at a minimum. When 20 is the meeting? 21 MR. CLUBOK: Let's go off the record. 22 THE VIDEOGRAPHER: Off record. 12:31. 23 (A recess was taken.) 24 THE VIDEOGRAPHER: On record. 1:11. 25</p>

<p>73</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Okay, Mr. Dondero, Mr. Ellington --</p> <p>3 we've talked a little bit about what Mr. Ellington</p> <p>4 told you about the insurance policy that was</p> <p>5 ultimately issued by Sentinel Reinsurance that is</p> <p>6 the subject of today's discussion. Do you</p> <p>7 remember that discussion before our break?</p> <p>8 A Yes.</p> <p>9 Q Okay. At the time you signed -- first</p> <p>10 of all, did you know that the --</p> <p>11 MR. CLUBOK: Strike that.</p> <p>12 Q Did you know the policy limit of that</p> <p>13 policy that you signed off on?</p> <p>14 MR. CLUBOK: Strike that. Let me say</p> <p>15 that more clearly.</p> <p>16 Q With respect to the Sentinel</p> <p>17 Reinsurance policy that Mr. Ellington spoke to you</p> <p>18 about in 2017 and that you approved, did you know</p> <p>19 the policy limits when you approved it?</p> <p>20 A Just in a most general sense that it</p> <p>21 was approximately 100 million. I don't know if</p> <p>22 there were different amounts set for different</p> <p>23 items or occurrences. I just remember the policy</p> <p>24 being around 100 million bucks.</p> <p>25 Q And when did you -- how did you learn</p>	<p>75</p> <p>1 have been natural for me even to sign the policy,</p> <p>2 but if I did, I did not read it or have any</p> <p>3 specific knowledge of what it covered or didn't</p> <p>4 cover.</p> <p>5 Q Did you sign the policy?</p> <p>6 A I don't believe so. I have no</p> <p>7 recollection of that.</p> <p>8 Q And you have no recollection of ever</p> <p>9 actually reading the policy, correct?</p> <p>10 A Correct.</p> <p>11 Q Do you have a recollection of reading</p> <p>12 any ancillary documents of the policy itself, like</p> <p>13 any related documents that were about the policy</p> <p>14 or connected to the policy in some way?</p> <p>15 A No.</p> <p>16 Q At the time Sentinel Re issued the</p> <p>17 \$100 million policy that you approved, what was</p> <p>18 the largest policy they had previously issued?</p> <p>19 A I have no idea.</p> <p>20 Q Had they ever previously issued a</p> <p>21 policy anywhere in the same magnitude as the</p> <p>22 policy that's at issue here today?</p> <p>23 A I believe they have done multiple</p> <p>24 policies in the millions and tens of millions, but</p> <p>25 I don't know the specifics.</p>
<p>74</p> <p>1 that the policy was \$100 million?</p> <p>2 A I just remember the policy was -- there</p> <p>3 is really only -- it took lots of twists and</p> <p>4 turns, I believe, to get it through compliance and</p> <p>5 get it through the reinsurer. I just remember</p> <p>6 there was a lot of back-and-forth, but I remember</p> <p>7 generally the policy was targeted to be around</p> <p>8 100 million.</p> <p>9 Q How did you learn that the policy was</p> <p>10 \$100 million? Did you learn it by reading it --</p> <p>11 reading the policy? Did you learn it because</p> <p>12 Mr. Ellington told you? Did you learn because</p> <p>13 compliance said something to you? How did you</p> <p>14 learn that the policy was \$100 million?</p> <p>15 A From Scott Ellington. You know, he</p> <p>16 handled the interactions with compliance and the</p> <p>17 reinsurer. I don't believe I ever saw the policy,</p> <p>18 nor was I involved in any of the conversations</p> <p>19 with the reinsurer or the -- or Highland</p> <p>20 compliance, that I remember.</p> <p>21 Q But you approved the policy, correct?</p> <p>22 A I approved the -- yes.</p> <p>23 Q And prior to approving the policy, did</p> <p>24 you read it?</p> <p>25 A No. I'm not -- I don't think it would</p>	<p>76</p> <p>1 Q Can you name one policy that they had</p> <p>2 done in the tens of millions prior to the policy</p> <p>3 that's at issue that we have been discussing</p> <p>4 today?</p> <p>5 A I wouldn't have specific knowledge.</p> <p>6 Q Well, you said you believed they've</p> <p>7 done multiple policies in the millions and tens of</p> <p>8 millions. Did you just make that up, or is that</p> <p>9 based on something specific?</p> <p>10 A Well, like I said, I believe they did</p> <p>11 some large title policy sharings that --</p> <p>12 Q You're saying under oath that you</p> <p>13 believe they had previously issued a policy that</p> <p>14 was at least \$10 million prior to issuing the one</p> <p>15 that we have been discussing today?</p> <p>16 MR. TAYLOR: Object to the form of the</p> <p>17 question. Okay.</p> <p>18 A I don't know if --</p> <p>19 Q Let me ask it again.</p> <p>20 Sir, are you testifying that you</p> <p>21 believe that Sentinel Reinsurance had previously</p> <p>22 issued a policy that was at least \$10 million</p> <p>23 prior to issuing the policy that we have been</p> <p>24 discussing today?</p> <p>25 A Okay. I don't know if it's prior or</p>

<p style="text-align: right;">77</p> <p>1 subsequent, but I know -- I don't know. I believe 2 they have, on some of the big title insurance, 3 like there was a big \$65 million title insurance 4 policy that they split with somebody. I don't 5 know if it was before or after. But my belief is 6 they have or continue to do things in the millions 7 and tens of millions of dollars.</p> <p>8 Q I want you to focus on my question. I 9 want you to -- there was a time when you approved 10 the issuance of this \$100 million policy, correct?</p> <p>11 A Yes.</p> <p>12 Q And it was not a title insurance 13 policy, right?</p> <p>14 A Correct.</p> <p>15 Q It was a judgment insurance policy, 16 correct?</p> <p>17 A I don't know what it covered and what 18 it didn't cover.</p> <p>19 Q Well, a \$100 million policy covered a 20 lot more than expected legal fees, correct?</p> <p>21 A I believe it covered legal outcomes 22 also, but --</p> <p>23 Q Okay. So in addition to covering legal 24 fees, it also was intended to cover against 25 judgments that would be entered against the</p>	<p style="text-align: right;">79</p> <p>1 having gotten and underwritten significant 2 insurance in a lot of other companies and a lot of 3 other places, it's a -- there's a lot of specifics 4 and a lot of highly negotiated parts to it, in 5 insurance in general, and I have no awareness of 6 what this policy covered, didn't cover, under what 7 circumstances, et cetera.</p> <p>8 Q At the time that you approved the 9 \$100 million insurance policy, did you understand 10 that part of what was covered by the policy was 11 legal liability of HFP and its subsidiaries?</p> <p>12 A I didn't have specific knowledge of 13 what was covered but an understanding that there 14 was some coverage of liability or outcomes.</p> <p>15 Q Okay. You understood that some of 16 the -- the \$100 million policy was not just for 17 legal fees and expenses, but it was also for some 18 liability or potential liability in litigation 19 with the insureds, correct?</p> <p>20 A Yes, and that's about as far as it 21 goes.</p> <p>22 Q And did you have any idea whatsoever, 23 when you approved the policy, as to what would be 24 the circumstances whereby that payment obligation 25 for legal liability would be triggered?</p>
<p style="text-align: right;">78</p> <p>1 insureds, correct?</p> <p>2 A If you say so. Again, I don't have 3 specific knowledge.</p> <p>4 Q No, I want to know what you say under 5 oath.</p> <p>6 So you approved this policy and when 7 you approved it, and you knew it was \$100 million, 8 did you understand that part of the policy was as 9 judgment insurance in case the insureds lost at 10 trial?</p> <p>11 A I did not have that specific 12 understanding.</p> <p>13 Q Did you understand that part of the 14 \$100 million policy's purpose was to pay for any 15 legal liability of the insureds who paid for the 16 policy?</p> <p>17 A I didn't have that specific knowledge. 18 And a word like "any" would be something I would 19 not have any knowledge of. And these insurance -- 20 any type of insurance and reinsurance things has 21 specifics around what's covered, what's not, what 22 entities, what has to be done in order to collect 23 or not collect. And I'm not even saying all this 24 from a Sentinel perspective.</p> <p>25 I'm just saying from my awarenesses of</p>	<p style="text-align: right;">80</p> <p>1 A I have no idea.</p> <p>2 Q Did you have any idea whatsoever, at 3 the time that you approved the \$100 million 4 insurance policy, that a trigger of coverage under 5 the policy would be legal liability of CDO Fund or 6 SOHC to UBS?</p> <p>7 A I have no idea. I had no idea then and 8 I have no idea now what's covered, what's the 9 triggers, and if it's -- if there's a bona fide 10 amount due or not. I have no idea.</p> <p>11 Q What was the amount paid for the 12 policy?</p> <p>13 MR. CLUBOK: Strike that.</p> <p>14 Q The amount paid for a policy is often 15 called a premium, right?</p> <p>16 A Yes.</p> <p>17 Q You are familiar with the term 18 "premium" in connection with an insurance policy, 19 right?</p> <p>20 A Yes.</p> <p>21 Q Okay. What was the premium on this 22 \$100 million insurance policy that you approved?</p> <p>23 A I -- I don't know -- I've heard -- you 24 know what, I don't know how the -- what I do know 25 at the time is the illiquid assets were 70 or</p>

<p>81</p> <p>1 80 million bucks. That's what I do know at that 2 time. I do remember that. 3 How they were accounted for or how much 4 of it was premium, how much of it was other 5 consideration or whatever, I don't know what 6 the -- I don't know what the split or the 7 breakdown was. 8 Q Okay. We'll come back to that answer, 9 but, first, I want to start with the question I 10 asked you, which is, what was the premium on the 11 \$100 million insurance policy that you approved? 12 A I don't know. 13 Q So you started to say in your answer, 14 "I've heard," and then you caught yourself. What 15 had you heard in connection with this question I 16 asked? 17 A I was remembering back, and, again, 18 this took lots of twists and turns, and I don't 19 even have a basis for saying "I heard." There 20 was -- there was -- I don't even have a basis 21 for -- it was a matter of trying to bridge the 22 illiquid assets to some liquidity and have some of 23 it be called a premium and some of it be called 24 something else. But I don't even know what -- I 25 don't even know what else or if it was all called</p>	<p>83</p> <p>1 are twists and turns, or you specifically know 2 there were twists and turns connected with this 3 insurance policy? 4 A There are always twists and turns, and 5 especially if we're on both sides of a 6 transaction, there's heightened compliance 7 scrutiny and then there's also heightened 8 regulatory scrutiny. So there's -- A, there's 9 always twists and turns, and there's definitely 10 always significant twists and turns if we're 11 involved on both sides of it. 12 Q And in this case you were involved on 13 both sides of it, correct? 14 A Yes. 15 Q And, as a result, you had to get 16 your -- you had to disclose that involvement on 17 both sides to your compliance people in order to 18 get it approved? 19 A Yes. 20 Q And who did you disclose that to in 21 compliance? 22 A I wasn't directly involved, but I know 23 Scott Ellington worked closely with Thomas Surgent 24 on it. 25 Q And who was Thomas Surgent at that --</p>
<p>82</p> <p>1 premium. The policy took twists and turns through 2 the regulators and compliance. I don't know what 3 the final structure of the policy was other than 4 it was ultimately about \$100 million of coverage. 5 Q And these twists and turns that you say 6 it took, is the entirety of your information about 7 that from Scott Ellington? 8 A Yes. And -- but I wasn't involved in 9 the twists and turns. At the time this wasn't 10 that big of a deal. It was something that was 11 just trying to help transition a dead entity. 12 Q Sorry, but you said there were twists 13 and turns. How did you know that there were 14 twists and turns? 15 A I just know there were. I mean, 16 because what they were trying to do, they had to 17 get it through both the regulators and Highland's 18 compliance department, so I -- there's always 19 give-and-take on their independent views of what's 20 the risk, what's the business purpose, what's a 21 fair structure, et cetera, et cetera. So that's 22 what I mean by "twists and turns." 23 Q Yeah, but you say you just know there 24 were twists and turns. You mean you were just 25 imagining it or guessing or because there always</p>	<p>84</p> <p>1 MR. CLUBOK: Or strike that. 2 Q What did Thomas Surgent do at that 3 time? 4 A He was our chief compliance officer. 5 Q And how do you know that Scott 6 Ellington worked closely with Thomas Surgent to 7 get approval for this transaction with the 8 insurance policy in 2017? 9 A He told me. And ultimately he had -- I 10 know he had to get Tom Surgent's sign-off on it, 11 which I believe he did. 12 Q And you said, "He told me." Do you 13 mean Scott Ellington told you? 14 A Yes. 15 Q And you -- how do you know that Scott 16 Ellington had to get Tom Surgent's sign-off on 17 this policy being issued? 18 A I can say unilaterally for at least the 19 last 15 years we've never done a transaction that 20 we were on both sides of, that didn't have 21 compliance sign off. 22 Q Okay. So your absolute policy at 23 Highland Capital is for any transaction where you 24 have a connection to both sides of the 25 transaction, "you" meaning Jim Dondero, you always</p>

<p>85</p> <p>1 get compliance approval, correct?</p> <p>2 A Yes.</p> <p>3 Q And is that a policy that Scott</p> <p>4 Ellington knows about?</p> <p>5 A Yes.</p> <p>6 Q Is that a policy that Thomas Surgent</p> <p>7 knows about?</p> <p>8 A Yes. It's an industry -- it's a</p> <p>9 post-2008 Sarbanes or Dodd-Frank mandate. Chief</p> <p>10 compliance officers have the personal liability of</p> <p>11 a C-suite executive starting in '08 in financial</p> <p>12 firms.</p> <p>13 Q I see. So if Thomas Surgent did not --</p> <p>14 MR. CLUBOK: Strike that.</p> <p>15 Q If Thomas Surgent -- well, you had to</p> <p>16 get Thomas Surgent's approval because you, Jim</p> <p>17 Dondero, had beneficial ownership interest on both</p> <p>18 sides of the transaction, correct?</p> <p>19 A Not because of -- more of control, not</p> <p>20 benefi- -- beneficial ownership on the Sentinel</p> <p>21 side. You have control on both sides, but, yes,</p> <p>22 it was appropriate to get compliance approval,</p> <p>23 which I'm certain we did. I can't imagine -- I</p> <p>24 can't imagine there is any transaction where, any</p> <p>25 transaction over the last 15 years that would</p>	<p>87</p> <p>1 Q How would Mr. Surgent have learned that</p> <p>2 Sentinel Reinsurance was an affiliated entity?</p> <p>3 A He would have known as part of Scott</p> <p>4 Ellington's presentation to him proposing the</p> <p>5 transaction.</p> <p>6 Q What presentation are you talking</p> <p>7 about?</p> <p>8 A Compliance builds -- they definitely</p> <p>9 have folders and documentation on any transaction</p> <p>10 that they -- especially any significant</p> <p>11 transaction that they approve. They have to keep</p> <p>12 written documentation for the regulators.</p> <p>13 Q Sorry, but have you seen a presentation</p> <p>14 that Scott Ellington prepared to describe the</p> <p>15 transaction that he would have shared with</p> <p>16 Mr. Surgent?</p> <p>17 A I have not seen it.</p> <p>18 Q Have you seen any presentation that</p> <p>19 Scott Ellington ever prepared related to this</p> <p>20 transaction?</p> <p>21 A I have not.</p> <p>22 Q Did Mr. Ellington -- did -- were you</p> <p>23 ever --</p> <p>24 MR. CLUBOK: Strike that.</p> <p>25 Q How often do people use PowerPoints</p>
<p>86</p> <p>1 involve affiliated entities that did not have</p> <p>2 compliance approval.</p> <p>3 Q And in this situation Sentinel Re</p> <p>4 insurance would have been an affiliated entity,</p> <p>5 using the phrase the way you just used it,</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q And HFP and its subsidiaries would have</p> <p>9 been affiliated entities, using the phrase the way</p> <p>10 you just described it, correct?</p> <p>11 A Yes.</p> <p>12 Q Is it your responsibility to ensure</p> <p>13 that compliance measures are adhered to?</p> <p>14 A Yes. I mean, it's every professional</p> <p>15 in the organization's responsibility, as part of</p> <p>16 the annual compliance review, to run appropriate</p> <p>17 things through compliance. But I would say under</p> <p>18 an abundance of caution, the organization is</p> <p>19 pretty well trained that anything that's close</p> <p>20 goes through compliance.</p> <p>21 Q Okay. But you never spoke with</p> <p>22 Mr. Surgent directly about this transaction,</p> <p>23 correct?</p> <p>24 A Correct. Scott Ellington was the</p> <p>25 person on this transaction.</p>	<p>88</p> <p>1 with you back in this time period to describe</p> <p>2 transactions or make it easier to follow them?</p> <p>3 A Often.</p> <p>4 Q Why?</p> <p>5 A I mean, just often. I mean, there's</p> <p>6 process for investment underwriting, there's</p> <p>7 process for trade execution, there's process for</p> <p>8 investment monitoring and tracking. Most of those</p> <p>9 are documentation, you know, based. And there is</p> <p>10 process and procedures around compliance also, and</p> <p>11 those are generally documentation based also.</p> <p>12 Q Would you have received a presentation</p> <p>13 for every major transaction that one of the</p> <p>14 affiliated entities did during this time period?</p> <p>15 A Not on the compliance side. I'm not</p> <p>16 directly involved in compliance. On most -- on</p> <p>17 most significant investments, generally I would be</p> <p>18 in an investment committee or be aware or be</p> <p>19 presented with something, yes.</p> <p>20 Q And so it would be highly unusual for</p> <p>21 you not to be presented with a PowerPoint, or the</p> <p>22 like, sort of presentation if there was a</p> <p>23 significant transaction being contemplated with</p> <p>24 one of the affiliated entities at that time,</p> <p>25 correct?</p>

<p>89</p> <p>1 MR. TAYLOR: Objection to form.</p> <p>2 A If there was a significant investment</p> <p>3 being made, you know, per se, but, again, that</p> <p>4 wasn't the case in what we're talking about. And</p> <p>5 I didn't see a PowerPoint on the insurance -- on</p> <p>6 the insurance product overall.</p> <p>7 Q Well, you mentioned before that you</p> <p>8 heard that there were 70 to 80 million dollars in</p> <p>9 illiquid assets?</p> <p>10 A Correct.</p> <p>11 Q And was it your understanding that all</p> <p>12 of those assets were transferred to Sentinel</p> <p>13 Reinsurance?</p> <p>14 A I believe that was part of the policy</p> <p>15 or part of the premium, and, again, part of the</p> <p>16 transition to, you know, provide liquidity and</p> <p>17 some functionality.</p> <p>18 Q And did you understand that in addition</p> <p>19 to illiquid assets there were also liquid assets</p> <p>20 that were transferred to Sentinel Reinsurance as</p> <p>21 part of the premium?</p> <p>22 A I don't remember that. I remember it</p> <p>23 being almost entirely illiquid assets.</p> <p>24 Q Were there any -- was there any cash</p> <p>25 that was transferred as part of the premium</p>	<p>91</p> <p>1 expected." Sorry --</p> <p>2 A Less than 7 or 8 of liquid assets or</p> <p>3 cash is what I would have expected. I would --</p> <p>4 when I say "preponderance," I would have guessed</p> <p>5 that 90 percent, or I would have expected</p> <p>6 90 percent or more was illiquid.</p> <p>7 Q Sorry. So do you believe that it was</p> <p>8 approximately 7 or 8 million dollars in liquid</p> <p>9 assets that was transferred as part of this?</p> <p>10 A No, I'm saying I don't know, but you</p> <p>11 were asking me my expectation of de minimis, and I</p> <p>12 would say that I would have thought that the cash</p> <p>13 and the liquid portion of the portfolio would have</p> <p>14 been 10 percent or less.</p> <p>15 Q Okay. So if the liquid portion was</p> <p>16 more than 10 percent, that's above what you call</p> <p>17 de minimis in a transaction like this, correct?</p> <p>18 A Yeah, I mean, you're asking my</p> <p>19 expectations, but I don't have specific awareness.</p> <p>20 Q Okay. Did you -- so getting back to</p> <p>21 Mr. Surgent, how would he have known that this was</p> <p>22 an affiliated transaction?</p> <p>23 A He would have known from the</p> <p>24 presentation, but he also has a high degree of</p> <p>25 awareness of our corporate structures and our</p>
<p>90</p> <p>1 payments?</p> <p>2 A I don't believe there was anything</p> <p>3 liquid or cash other than a de minimis amount.</p> <p>4 That's my recollection. But I never saw a</p> <p>5 reconciliation or a true-up. But it was never</p> <p>6 described to me as anything other than a</p> <p>7 preponderance of illiquid assets.</p> <p>8 Q What would a de minimis amount -- when</p> <p>9 you say "de minimis," you're -- in the past, I've</p> <p>10 learned that your view of de minimis is different</p> <p>11 than lots of people's view. So when you say</p> <p>12 "de minimis," do you mean less than 1 million,</p> <p>13 less than 10 million, less than 100 million?</p> <p>14 What's de minimis to you in this context?</p> <p>15 A I would guess that there would be less</p> <p>16 than 10 percent of any kind of liquid or cash</p> <p>17 assets. That would be my guess. That would be</p> <p>18 10 percent or -- well, less than 10 percent.</p> <p>19 Q Okay. But if it was \$10 million in</p> <p>20 cash, you would consider that to be de minimis?</p> <p>21 A I was kind of using 10 percent as a</p> <p>22 cutoff. It was 7 or 8 -- 7 or 8 or less of cash</p> <p>23 or illiquid assets is what I would have expected.</p> <p>24 Q Sorry. You said, "It was 7 or 8 less</p> <p>25 of cash or illiquid is what I would have</p>	<p>92</p> <p>1 various entities, and it would have been part of</p> <p>2 his analysis and decision-making process. He</p> <p>3 wouldn't have approved it without knowing the</p> <p>4 details and the counterparties.</p> <p>5 Q And when compliance approves</p> <p>6 transactions like this, is there a formal process</p> <p>7 they go to? Is there a way that that approval is</p> <p>8 reflected? Is there a form they fill out? Is</p> <p>9 there a, you know, group of people they have to</p> <p>10 copy? Anything like that?</p> <p>11 MR. TAYLOR: Objection to the form.</p> <p>12 A I don't know the -- there is some</p> <p>13 formality to the process, but I don't know what it</p> <p>14 is.</p> <p>15 Q Did you ever see an approval by</p> <p>16 Mr. Surgent --</p> <p>17 A No.</p> <p>18 Q -- of this projection?</p> <p>19 A I have not.</p> <p>20 Q Okay. So we got off on a little</p> <p>21 tangent here, but are you aware of Sentinel Re</p> <p>22 ever issuing any other judgment insurance policy</p> <p>23 in its history?</p> <p>24 A I -- I don't know, but I know it's</p> <p>25 considered some, and I know it's fought claims,</p>

<p>93</p> <p>1 you know, but I don't know for sure.</p> <p>2 Q Do you know -- by the way, I've called</p> <p>3 it a judgment insurance policy. Have you heard of</p> <p>4 a phrase called "after the event," or "ATE"</p> <p>5 policy?</p> <p>6 A Yeah, I mean, like I said, I know</p> <p>7 people sell claims and judgments, and after -- I</p> <p>8 mean, I have heard the term, yes.</p> <p>9 Q Okay. Would you describe this policy</p> <p>10 as an after the event policy?</p> <p>11 A No.</p> <p>12 Q Why not?</p> <p>13 A I mean, for all the reasons we talked</p> <p>14 about earlier. We viewed all the residual issues</p> <p>15 at HFP to be things that would be handled in due</p> <p>16 course and they needed liquidity and legal help or</p> <p>17 coordination. And the thought was, over an</p> <p>18 extended period of time, things would be resolved</p> <p>19 in normal course of business for not gigantic</p> <p>20 amounts of issue.</p> <p>21 Q Right, but the insurance policy that</p> <p>22 you approved, I think you previously agreed it was</p> <p>23 a -- it could be called a judgment insurance</p> <p>24 policy, correct?</p> <p>25 A I mean, I think I resisted naming it</p>	<p>95</p> <p>1 Are you saying that the main business</p> <p>2 purpose of this insurance policy was to do</p> <p>3 something other than act as a legal liability</p> <p>4 insurance policy?</p> <p>5 A Yes.</p> <p>6 Q And what is that other thing, or what</p> <p>7 is the other function of this policy other than</p> <p>8 being a legal liability insurance policy?</p> <p>9 A To transition the residual legal, tax,</p> <p>10 authority, organizational responsibilities and</p> <p>11 issues over an extended period of time faced by a</p> <p>12 dead entity that had been unwound as worthless for</p> <p>13 tax purposes and wasn't functioning in and of</p> <p>14 itself.</p> <p>15 Q Could you be any more specific than</p> <p>16 that in terms of the purpose of this policy other</p> <p>17 than to serve as a legal liability insurance</p> <p>18 policy?</p> <p>19 A I just said it, and I've said it, like,</p> <p>20 five times, so I'm not going to say that again.</p> <p>21 But for transition issues on residual legal,</p> <p>22 regulatory, tax, operating issues and that -- but</p> <p>23 there was a liability component to it also. But</p> <p>24 the expectation was that the liability stuff would</p> <p>25 resolve itself over time, you know, partly with</p>
<p>94</p> <p>1 that because I viewed it as much more than that,</p> <p>2 but that it did have some liability component to</p> <p>3 it, but I don't believe that that was the primary</p> <p>4 purpose.</p> <p>5 Q But you would agree that the policy was</p> <p>6 a legal liability insurance policy, correct?</p> <p>7 A No, I don't want to say that.</p> <p>8 Q I'm not asking if you want to say that.</p> <p>9 I'm asking if it's true. It's true that this</p> <p>10 policy that you approved for -- with a</p> <p>11 \$100 million potential value was a legal liability</p> <p>12 insurance policy, correct?</p> <p>13 A I'm saying my recollection is that it</p> <p>14 had a component of that to it, but that was not</p> <p>15 the full extent of it or the business purpose of</p> <p>16 it, per se.</p> <p>17 Q You're saying the main business purpose</p> <p>18 of this insurance policy was to be something other</p> <p>19 than a legal liability insurance policy; is that</p> <p>20 correct?</p> <p>21 Sorry, that question got garbled.</p> <p>22 A Yeah, there was --</p> <p>23 Q Jim, I'm sorry, let me ask it again</p> <p>24 because that question got garbled a little bit the</p> <p>25 way I said it.</p>	<p>96</p> <p>1 legal fees and partly with maybe some settlements,</p> <p>2 partly with, you know, time lapse on statute of</p> <p>3 limitations, you know, who knows.</p> <p>4 And then but what also happens too is</p> <p>5 things that you don't know or don't expect at the</p> <p>6 time you put a transition policy like this in</p> <p>7 place, there are things you don't know that end up</p> <p>8 coming up later, like -- you know, like whatever,</p> <p>9 like HarbourVest in the Highland case wasn't</p> <p>10 something that was known or thought about when</p> <p>11 filed.</p> <p>12 Q Did this policy cover the HarbourVest</p> <p>13 case?</p> <p>14 A I'm sorry, I got off on a tangent. I</p> <p>15 don't think HarbourVest is related to what we're</p> <p>16 talking about today.</p> <p>17 Q Okay. So I want to talk about things</p> <p>18 that are related what we're talking about, and I</p> <p>19 want to know very specifically -- let's take it --</p> <p>20 just ask it again clearly.</p> <p>21 You're saying -- would you agree the</p> <p>22 main purpose of this policy was to serve as a</p> <p>23 legal liability insurance policy? Would you agree</p> <p>24 with that?</p> <p>25 A No. I believe it was a component of</p>

<p>97</p> <p>1 it.</p> <p>2 Q Okay. And so you have testified that</p> <p>3 the main point of issuing this insurance policy</p> <p>4 was to assist in the transition of HFP. Is that a</p> <p>5 fair characterization of what you said?</p> <p>6 A Yes.</p> <p>7 Q And specifically how? How would this</p> <p>8 policy help -- how was it intended that this</p> <p>9 policy would help HFP transition other than by</p> <p>10 being available to satisfy the legal liability HFP</p> <p>11 might have with respect to the UBS claims?</p> <p>12 A Again, because it would handle the</p> <p>13 ongoing issues of an offshore Cayman entity that</p> <p>14 wasn't functioning but had a tail of legal,</p> <p>15 regulatory, tax, operating issues, some of which</p> <p>16 were known and some of which were unknown. And it</p> <p>17 didn't have liquidity or staff to handle it on its</p> <p>18 own, and Sentinel would be providing that</p> <p>19 functionality.</p> <p>20 Q Sorry, how? How exactly? What</p> <p>21 specifically was anticipated when you signed off</p> <p>22 on this policy that Sentinel would ever do other</p> <p>23 than cover legal liability with respect to the UBS</p> <p>24 claim?</p> <p>25 A It would manage all the things I just</p>	<p>99</p> <p>1 Q No, I understand. I'm going to come</p> <p>2 back to the main purpose, but as a secondary</p> <p>3 purpose, in your view, you would agree that the</p> <p>4 insurance policy, when it was taken out, was</p> <p>5 intended to cover legal liability to UBS for any</p> <p>6 of the affiliated entities that signed on to the</p> <p>7 policy on the off chance that such liability</p> <p>8 arose, correct?</p> <p>9 A Not particularly, but for all legal</p> <p>10 liability issues in general. You have to</p> <p>11 remember, there were big residual issues with</p> <p>12 Barclays. There was big residual issues with</p> <p>13 Citibank. There were aggressive worthlessness</p> <p>14 deductions taken by some of the investors in there</p> <p>15 that could have created a tax audit or regulatory</p> <p>16 issues -- not regulatory issues so much as tax</p> <p>17 issues with the IRS.</p> <p>18 And so it was meant to cover all those</p> <p>19 things and address all those things if the</p> <p>20 residual, dormant, dead HFP entity were attacked</p> <p>21 by anybody.</p> <p>22 Q I'm going to come back to the other</p> <p>23 things, okay, and I want to -- you've said a bunch</p> <p>24 of other things that you claim the policy was</p> <p>25 intended to, but one of the things that the policy</p>
<p>98</p> <p>1 talked about as transition items.</p> <p>2 Q What do you mean, "manage"? Like</p> <p>3 Sentinel was going to bring people over to manage,</p> <p>4 Sentinel was going to pay for something? What was</p> <p>5 the specific thing that Sentinel was signing up to</p> <p>6 do under this policy other than satisfy legal</p> <p>7 liability to UBS for its litigation in New York?</p> <p>8 A Again, the UBS litigation in New York</p> <p>9 wasn't viewed as likely or material at the time.</p> <p>10 We went over that earlier. But let's say -- okay.</p> <p>11 HFP --</p> <p>12 Q Wait, wait, sorry. Just to be clear</p> <p>13 here, you're saying at the time this policy was</p> <p>14 taken out there was no expectation of any material</p> <p>15 legal liability for any of your affiliated</p> <p>16 entities as a result of the UBS litigation,</p> <p>17 correct?</p> <p>18 A Correct. I said it four times earlier.</p> <p>19 Q I understand. So getting back to the</p> <p>20 policy, so -- but by the way, would you agree that</p> <p>21 the policy was intended to cover the UBS</p> <p>22 litigation liability on the off chance, from your</p> <p>23 perspective, that there should be liability?</p> <p>24 A Again, it was a secondary not a main</p> <p>25 driver. The business purpose was for transition.</p>	<p>100</p> <p>1 was intended to cover when you approved it was any</p> <p>2 legal liability of HFP or its affiliates to UBS in</p> <p>3 connection with the New York litigation, correct?</p> <p>4 A As long as we use the words "one of the</p> <p>5 things," not the main thing, not the primary thing</p> <p>6 not the focus of our attention at that point in</p> <p>7 time. As long as it's just included among the</p> <p>8 litany of other residual things that HFP was</p> <p>9 dealing with, yes. But I resist putting any --</p> <p>10 and I won't put any clarifier on it that makes it</p> <p>11 seem like it was a main point of contention</p> <p>12 because we absolutely, at the time, viewed the --</p> <p>13 all the way up through August of '19 viewed UBS as</p> <p>14 not significant and not a material risk.</p> <p>15 Q Yes, you've testified to that. So you</p> <p>16 say that this policy was not taken out with a</p> <p>17 specific eye to UBS, correct?</p> <p>18 A Yes.</p> <p>19 Q And you say that the main point of this</p> <p>20 legal liability insurance policy was not to cover</p> <p>21 liability to UBS, correct?</p> <p>22 A Correct.</p> <p>23 Q We'll come back to that. We'll come</p> <p>24 back to the other purpose of the policy, but I</p> <p>25 just want to focus on it is the case, though, that</p>

<p>101</p> <p>1 you would agree that at least one of what you say 2 are many purposes of this insurance policy was to 3 cover any legal liability of HFP or its affiliates 4 to UBS in connection with the New York litigation, 5 correct? 6 MR. TAYLOR: Andy, this has been asked 7 and answered numerous, numerous times at this 8 point. 9 MR. CLUBOK: Then it's a simple yes. 10 Then I would like a simple yes to this question, 11 Clay. It should be real simple. I'll ask the 12 question again, and I have never gotten a simple 13 yes. I've gotten a lot of stuff that the judge 14 doesn't like. So I'm going to ask Mr. Dondero, as 15 he said at the beginning, that he'd say yes if it 16 was a simple answer, and so I'm going to ask the 17 question one more time and then I'll move on. 18 Q Even though I understand you say that 19 there were other purposes of this insurance 20 policy, you agree that at least one purpose of the 21 insurance policy that you approved, that we have 22 been talking about today, was to cover any legal 23 liability of HFP or its affiliates to UBS in 24 connection with the New York litigation, correct? 25 MR. TAYLOR: I'm just going to object</p>	<p>103</p> <p>1 what I think Mr. Dondero is fighting on, so I'm 2 going to try to keep being more and more specific. 3 Q Mr. Dondero, would you agree that at 4 least one purpose of the \$100 million insurance 5 policy that you approved was to cover liability to 6 UBS in connection with the New York litigation on 7 behalf of HFP and its affiliates? 8 A Yes. 9 Q Thank you. Okay. 10 Now, let's talk about the other 11 purposes of the policy. Are you saying that the 12 policy also covered any losses that HFP or its 13 affiliates might suffer to Barclays after the 14 issuance of the policy? 15 A Again, I haven't seen it, but my belief 16 was that it was -- the business purpose was 17 that -- for it to be broad based for things known 18 and unknown and include a variety of tax and/or 19 legal dispute counterparties. 20 Q But you specifically said Barclays. 21 That's why -- I didn't -- that came from you, as 22 an example. And I don't know if you're just 23 making that up as an example or if you're saying 24 that you specifically, when you approved it, 25 understood the policy to cover potential liability</p>
<p>102</p> <p>1 to the form. 2 A Okay, Andy, I can't say yes because of 3 what you threw in there on the clarifiers at the 4 end that I don't know the answers to. I don't 5 know what the terms and conditions and trigger 6 points and I don't know which entities of HFP are 7 included in the policy or not included in the 8 policy. I don't know. But the general purpose 9 was to cover whatever legal disputes and 10 resolutions HFP would be subject to. I mean -- 11 MR. CLUBOK: Okay, Clay, that's why the 12 question has not been asked and answered. Every 13 time I've asked it, there has been a different 14 qualification. I'm going to explore this until I 15 get a direct answer, okay? I'm going to ask you 16 not to keep objecting "asked and answered." I 17 will show that clip to the judge, and it's -- I 18 can't stop Mr. Dondero from qualifying things, but 19 I'm allowed to keep asking until I get an answer 20 to my question. 21 MR. TAYLOR: Andy, here is just 22 something for your consideration. You keep on 23 throwing in the word "any" -- 24 MR. CLUBOK: I understand. I've asked 25 different questions, and I'm getting closer to</p>	<p>104</p> <p>1 with Barclays. And that's what I'm trying to get 2 at. I'm going to ask -- you threw out different 3 names, and I'm trying to just see if you were just 4 throwing those out up against the wall or if you 5 were actually saying, I recall that those were 6 things the policy was intended to cover. 7 So let me -- with that in mind, I'll 8 just ask you. When you signed off on this 9 \$100 million insurance policy, did you believe 10 that it would cover liability that HFP or its 11 affiliates might face to Barclays in the future? 12 A Yes, to any claim known and unknown. I 13 mean, that -- the history of Highland over the 14 last 15 years is resolution of a dispute is not 15 necessarily as much resolution as we thought it 16 was. You know, like I said, UBS -- we thought we 17 had them settled in '08 and then we paid again in 18 2015, and you're back again, right? And then 19 Redeemer, we settled with them in 2015, all kinds 20 of accolades and whatever, and then they came back 21 to us with arbitration and award and forced us 22 into bankruptcy on the same issues, you know. 23 So it's -- the settlements that we had 24 with Barclays, the settlements that we had with 25 Citibank all could have potentially come back</p>

<p>105</p> <p>1 similarly because their settlements touched HFP 2 also, just like your guy's settlements touched 3 HFP. 4 Q I'm going to ask you to please listen 5 to the questions I ask and answer the questions 6 that I ask, if you can. 7 Are you saying that when you signed off 8 on this \$100 million insurance policy, you 9 believed that it would cover any liability from 10 any source against HFP going forward, known or 11 unknown? 12 A That was my belief that it was -- the 13 business purpose was primarily, yes, a transition 14 policy. 15 Q And so, from the time that you signed 16 this policy through today, if HFP or any of its 17 affiliates have any legal liability, your 18 expectation is that it would be covered by this 19 \$100 million policy, correct? 20 A I didn't sign the policy, and the 21 insurance policy, whatever it says, it says, and 22 who it covers under what circumstances it will 23 cover or dispute, but I don't know the specifics. 24 Q Okay. Mr. Dondero, so first of all -- 25 A The answer is I don't know. If you</p>	<p>107</p> <p>1 A That's my recollection. 2 Q And that's -- did you ever look at the 3 assets that were transferred? 4 A No. 5 Q Did you ever review the fair market 6 value of the assets that were transferred to buy 7 this policy? 8 A No. That is how it was presented to 9 me, that it was 70 or 80 million of fair market 10 value. 11 Q Presented to you by Scott Ellington? 12 A Yes. 13 Q Okay. And when you approved that 14 transaction -- I'm trying to figure out what you 15 believed you were buying with all those assets 16 that you were moving from one affiliated entity to 17 another, okay. And by the way, was it an arm's 18 length transaction? 19 A Yeah, I -- ultimately getting it 20 through compliance and the regulators, I think 21 that's one of the standards that compliance and 22 the regulators use, is that it's a 23 market-structured -- a market-level transaction. 24 That's the whole purpose of compliance when you 25 have affiliated entities.</p>
<p>106</p> <p>1 don't like my clarifier, then my answer is I don't 2 know. 3 Q Well, my questions have been from the 4 beginning, when you signed off -- first of all, 5 you claim you didn't sign the policy, right? 6 A I don't believe I did, no. 7 Q Okay. But you at least know that you 8 signed off on the policy. You authorized it to be 9 signed, correct? 10 A Yes. 11 Q Okay. And when you authorized the 12 signing of a policy for \$100 million and the 13 transfer of roughly that amount or more in assets 14 from other affiliated entities -- 15 MR. TAYLOR: Object to that 16 characterization of the evidence. 17 Q Okay. Well, would you agree that over 18 \$100 million in fair market value was transferred 19 to Sentinel Re in consideration for this policy? 20 A My recollection is it was between 70 21 and 80. 22 Q You said before -- you think the total 23 fair market value of the assets transferred to 24 Sentinel Reinsurance for this policy was between 25 70 and 80 million dollars?</p>	<p>108</p> <p>1 Q Did you make any effort to ensure that 2 it was an arm's length transaction or the 3 equivalent of an arm's length transaction? 4 A No. Again, that would have been the 5 responsibility of compliance and the regulators. 6 Q Did you ever do a market test to see 7 what the fair market value of the assets were? 8 A I did not, but I'm very comfortable 9 organizationally the fair market values at any 10 point in time are accurate and that's been proven 11 for 15 years. 12 Q Sorry, the fair market values that 13 Highland retains on its books are accurate? 14 A Very accurate. They are robustly 15 tested, verified, generally third parties. They 16 are documented. I'm very comfortable our fair 17 market values on liquid, less liquid, and illiquid 18 securities, whatever buckets 1, 2 and 3, are 19 accurate. 20 Q So if the documents -- 21 MR. CLUBOK: Strike that. 22 Q So where would we go to find documents 23 that reflect the fair market values of the assets 24 that were transferred at the time of the 25 transfers?</p>

<p>109</p> <p>1 A That would all be at Highland.</p> <p>2 Q Where?</p> <p>3 A We keep detailed valuation records</p> <p>4 going back 20 years.</p> <p>5 Q In what system?</p> <p>6 A I don't know.</p> <p>7 Q Who would know?</p> <p>8 A I don't think Highland could be</p> <p>9 compliant as a registered investment advisor and</p> <p>10 not be able to produce those to you.</p> <p>11 Q Who would be able to most easily get</p> <p>12 those documents, if they are still there, if you</p> <p>13 know?</p> <p>14 A DSI is functioning as the back office</p> <p>15 of Highland, as far as I understand it.</p> <p>16 Q And there would have been fair market</p> <p>17 values for each of the assets that were</p> <p>18 transferred to pay for the insurance policy?</p> <p>19 A Yes.</p> <p>20 Q And we could rely on those fair market</p> <p>21 values in the Highland books if we wanted to know</p> <p>22 the fair market value of the assets that were</p> <p>23 transferred?</p> <p>24 A I believe so.</p> <p>25 Q So when you -- getting back to what you</p>	<p>111</p> <p>1 liability with respect to other entities other</p> <p>2 than UBS, Barclays, Citibank that we have not</p> <p>3 specifically mentioned?</p> <p>4 A Yeah, or tax authorities or -- yes. I</p> <p>5 mean, that just -- that was part and parcel of it,</p> <p>6 but, again, the terms of the payouts and the -- I</p> <p>7 have no knowledge of. And I don't know if they</p> <p>8 are specifically addressed or ignored. I don't</p> <p>9 know how UBS is handled in the policy. I do not</p> <p>10 have detailed knowledge on the specifics.</p> <p>11 Q When was the last time you thought</p> <p>12 about the policy before you got the -- before you</p> <p>13 heard about this adversary proceeding?</p> <p>14 A I hadn't thought about it at all. I</p> <p>15 wasn't even sure the New York action applied,</p> <p>16 honestly.</p> <p>17 Q Other than legal liability for either</p> <p>18 attorneys' fees or bad outcomes of litigation, you</p> <p>19 have repeatedly used a phrase about "liquidity for</p> <p>20 transition." I'm trying to understand,</p> <p>21 specifically under what circumstances did you</p> <p>22 think Sentinel Re would ever pay money to handle</p> <p>23 something that was not lawyer fees or legal</p> <p>24 liability under this policy?</p> <p>25 A Well, lawyers' fees, essentially, you</p>
<p>110</p> <p>1 knew at the time, you approved this transaction.</p> <p>2 A Right.</p> <p>3 Q Did you believe that you were</p> <p>4 purchasing liability insurance for all known and</p> <p>5 unknown claims of Highland Financial Partner and</p> <p>6 its subsidiaries?</p> <p>7 MR. TAYLOR: Objection to the form of</p> <p>8 the question.</p> <p>9 A I didn't have specific knowledge beyond</p> <p>10 that it was a transition policy to cover -- to</p> <p>11 provide the liquidity and the management necessary</p> <p>12 to deal with the conflicts and then probably net</p> <p>13 of those amounts to provide some amounts of</p> <p>14 liability insurance given certain circumstances or</p> <p>15 certain events.</p> <p>16 Q Did you believe that you were buying</p> <p>17 liability insurance with respect to the Barclays</p> <p>18 claims that were known or unknown at the time?</p> <p>19 A Generally, yes.</p> <p>20 Q Did you believe you were buying legal</p> <p>21 liability insurance with respect to the Citibank</p> <p>22 claims against HFP and its subsidiaries that were</p> <p>23 known or unknown at the time?</p> <p>24 A Generally, yes.</p> <p>25 Q Did you believe you were buying legal</p>	<p>112</p> <p>1 know, any other operating or regulatory costs or</p> <p>2 defenses, and then bona fide settlements and then,</p> <p>3 you know, but -- Andy, I know you know the</p> <p>4 insurance world. Bona fide settlements are --</p> <p>5 bona fide settlements are getting paid on a</p> <p>6 more -- that's a whole industry subset of its own,</p> <p>7 you know.</p> <p>8 Q We'll come back to that. What do you</p> <p>9 mean by "operating or regulatory costs"? What</p> <p>10 does that mean?</p> <p>11 A If there's any regulatory costs for</p> <p>12 operating in the Caymans, if there is any, like I</p> <p>13 said, tax questions on -- or challenges on the</p> <p>14 worthlessness deduction when HFP was unwound, I --</p> <p>15 you know, all those kinds of things.</p> <p>16 Q You believe that this policy you're</p> <p>17 buying would pay for costs associated with</p> <p>18 challenges to the worthless tax deduction that you</p> <p>19 took when HFP was declared insolvent?</p> <p>20 A Again, I believe there was a transition</p> <p>21 policy. That's how it was presented to me.</p> <p>22 Q Are you saying that you believe the</p> <p>23 policy that you approved buying, that we have been</p> <p>24 discussing today, was expected to pay costs</p> <p>25 associated with challenges to the worthless tax</p>

<p>113</p> <p>1 deduction that you took when HFP was declared 2 insolvent? 3 A Yes. 4 Q And did Sentinel Re ever pay any costs 5 associated with that worthless tax deduction that 6 you took? 7 A I do not know. The administering of 8 the policy and the payment of expenses and legal 9 fees, Scott Ellington would have an awareness of 10 that. I do not. 11 Q By the way, that worthless tax 12 deduction provided a significant tax benefit to 13 you personally, correct? 14 A I don't know. I wasn't a majority 15 owner in HFP. "A significant tax" -- it was a 16 complete wipeout economically, and there was 17 some -- but those are bona fide -- the 18 worthlessness deduction for a dead entity is a 19 bona fide -- it's a bona fide tax deduction, it's 20 a bona fide policy. But a lot of times the IRS 21 questions it. It doesn't mean that it was in any 22 way inappropriate. 23 Q But if UBS had lost its litigation 24 against HFP and its subsidiaries, that worthless 25 tax deduction would have had to be reversed,</p>	<p>115</p> <p>1 that. 2 Q You remember that you were -- maybe 3 without knowing the specific numbers, you remember 4 you faced significant consequences if the 5 worthless tax deduction you took in connection 6 with HFP was disallowed by the IRS, correct? 7 MR. TAYLOR: Same objections. 8 A Yeah, I have no awareness of that, 9 Andy. And, listen, the way I understand worthless 10 deductions is it's really a declaration at a time 11 and point that the entity is worthless and no 12 longer exists, okay, as a functioning entity. If 13 the tax authorities overturn that position, it 14 doesn't mean you never get that tax deduction for 15 the loss that's occurred. It just means you get 16 it later. 17 So it's not -- it's a timing issue more 18 than anything else. And, again, it's in no way 19 improper, but I don't remember it being a decision 20 variable as you're describing it. 21 Q You knew that everyone who was 22 potentially going to be impacted, if the worthless 23 tax deduction was disallowed, would potentially 24 have a claim directly against you as the decision 25 maker of HFP; is that true?</p>
<p>114</p> <p>1 correct? 2 A I have no knowledge or awareness of 3 that. 4 Q You were told specifically that there 5 would be a significant tax liability for you and 6 others if HFP and its subsidiaries were to prevail 7 in the New York litigation against UBS; isn't that 8 true? 9 A I don't remember that at all. 10 Q You remember that you were on the hook 11 for over \$50 million personally if that worthless 12 tax deduction was overturned by the IRS, correct? 13 MR. TAYLOR: Objection to the form. 14 A I have no specific knowledge on any of 15 this, Andy. 16 Q I should say -- 17 A You can refresh -- 18 Q -- you remember that you were on the 19 hook for over \$50 million personally if the 20 worthless tax deduction was disallowed by the IRS, 21 correct? 22 MR. TAYLOR: Objection. Lack of 23 foundation and calls for speculation. 24 A I don't have a -- you can try and 25 refresh me on it, but I have no recollection of</p>	<p>116</p> <p>1 A No, that's not true. 2 Q Scott Ellington repeatedly warned you 3 that there would be significant tax consequences 4 if the worthless tax deduction were to be 5 disallowed by the IRS, correct? 6 MR. TAYLOR: Object to the form of the 7 question. 8 A I don't remember that, Andy. And just 9 because you're a tax partner doesn't make you 10 liable. You do things in good faith, and it ends 11 up being a timing issue and the IRS delays the 12 deduction. That doesn't necessarily -- that 13 doesn't necessarily create any liability. 14 Q Scott Ellington repeatedly warned you 15 that if HFP were to win the litigation against 16 UBS, there would be significant tax consequences, 17 correct? 18 MR. TAYLOR: Object to the form of the 19 question. 20 A I don't remember any of that, Andy. 21 Q Scott Ellington tried to get you to 22 settle the UBS case many times, right? 23 A I -- I mean, again, I remember the 24 August '19 stuff. I don't remember many times 25 before that. I don't remember a bid ask before</p>

<p>117</p> <p>1 that.</p> <p>2 Q Is the DAF -- the DAF is a</p> <p>3 donor-advised fund?</p> <p>4 A Yes.</p> <p>5 Q And it's a charitable fund that you</p> <p>6 established?</p> <p>7 A Yes.</p> <p>8 Q Roughly how much does it have in assets</p> <p>9 right now?</p> <p>10 MR. TAYLOR: Andy, that's not at all an</p> <p>11 appropriate line of questioning, and he does not</p> <p>12 have to answer it.</p> <p>13 MR. CLUBOK: It is, and I'll link it up</p> <p>14 here in a second.</p> <p>15 Q It certainly has -- well, let me put it</p> <p>16 this way: You know that HFP and CDO Fund</p> <p>17 collectively had a \$32 million note payable from</p> <p>18 DAF that it transferred to Sentinel as part of</p> <p>19 purchasing the insurance policy; isn't that true?</p> <p>20 A I believe there is a note in there from</p> <p>21 the DAF of 32 millionish, but I don't remember how</p> <p>22 it got there.</p> <p>23 Q And did the DAF have enough money to</p> <p>24 pay that \$32 million?</p> <p>25 A It doesn't have the liquidity, but it</p>	<p>119</p> <p>1 Q Well, do you know who the DAF owes that</p> <p>2 \$32 million to today?</p> <p>3 A No, I do not.</p> <p>4 Q You have no clue whatsoever as to</p> <p>5 where -- as to who is the current holder of that</p> <p>6 \$32 million note; is that correct?</p> <p>7 A I do not. I'm willing to be refreshed,</p> <p>8 but I don't know. I don't remember.</p> <p>9 Q Who is responsible for making payments</p> <p>10 on behalf of the DAF of that \$32 million note?</p> <p>11 A The -- I don't know, the DAF trustee, I</p> <p>12 guess.</p> <p>13 Q Who is the DAF trustee?</p> <p>14 A Grant Scott.</p> <p>15 Q And does Grant Scott have full</p> <p>16 authority to pay off that \$32 million note?</p> <p>17 A I believe ultimately.</p> <p>18 Q Do you have any say in the matter?</p> <p>19 A I think we're investment advisor for</p> <p>20 the DAF.</p> <p>21 Q Who is "we" in that sentence?</p> <p>22 A I believe -- that's a good question.</p> <p>23 Probably Sky -- probably SkyBridge, I'm guessing,</p> <p>24 has a shared services asset management agreement</p> <p>25 with the DAF, replacing what used to be done by</p>
<p>118</p> <p>1 has more than 100 million in assets at this point.</p> <p>2 Q Okay. The DAF has more than</p> <p>3 \$100 million in assets. Has it made any payments</p> <p>4 on this \$32 million note?</p> <p>5 A I do not know.</p> <p>6 Q Who owns the \$32 million note now?</p> <p>7 A I do not know.</p> <p>8 Q It was held by HFP and CDO Fund</p> <p>9 previously, correct?</p> <p>10 MR. CLUBOK: Strike that.</p> <p>11 Q It was held by either HFP or CDO Fund</p> <p>12 prior to the Sentinel Reinsurance policy purchase,</p> <p>13 correct?</p> <p>14 A I believe so.</p> <p>15 Q And you understand that it was</p> <p>16 transferred to Sentinel Reinsurance as part of the</p> <p>17 insurance policy, correct?</p> <p>18 A It would make sense that that would</p> <p>19 have been part of the illiquid securities or</p> <p>20 illiquid asset bucket.</p> <p>21 Q And you know it has been transferred</p> <p>22 since, right?</p> <p>23 A I don't have -- I don't have the</p> <p>24 specific knowledge to be helpful here, Andy. I</p> <p>25 don't know.</p>	<p>120</p> <p>1 Highland.</p> <p>2 Q When was that?</p> <p>3 A That started when everybody moved --</p> <p>4 well, Seery terminated all the agreements, I</p> <p>5 think, at the end of February. When everybody</p> <p>6 moved over here at the end of February or March,</p> <p>7 the bank and the DAF and other entities redid</p> <p>8 their shared services agreements with SkyBridge.</p> <p>9 Q And you control SkyBridge, correct?</p> <p>10 A No, I do not.</p> <p>11 Q What ownership do you have in</p> <p>12 SkyBridge?</p> <p>13 A I believe at the moment it's zero and</p> <p>14 we're trying to figure out how best to construct</p> <p>15 the ownership there.</p> <p>16 Q Who owns SkyBridge?</p> <p>17 A The employees at the moment.</p> <p>18 Q Which employees?</p> <p>19 A I don't know. We're doing an</p> <p>20 organizational restructure analysis of how that</p> <p>21 entity should be held. And I haven't seen the</p> <p>22 final recommendation yet.</p> <p>23 Q Who is controlling SkyBridge today?</p> <p>24 A I -- I don't know. I don't know how</p> <p>25 much of it is -- it's some combination of Frank</p>

<p>121</p> <p>1 Waterhouse and -- some combination of Frank 2 Waterhouse, J.P., probably Isaac and Ellington, 3 but I don't want to say for sure Isaac and 4 Ellington because I don't know. 5 Q And you are saying that you have no say 6 whatsoever in SkyBridge as of today? 7 A Other than as a client, I'm not an 8 owner. 9 Q What do you mean, "other than as a 10 client"? 11 A Well, other than as -- I'm the chairman 12 of NexBank and NexBank is a client, and I'm the 13 president of NextPoint and NextPoint is a client. 14 Q Does SkyBridge have full authority to 15 make a decision as to whether and if or when the 16 DAF pays off the \$32 million note that used to be 17 held by HFP and CDO Fund? 18 A I don't know. I don't know -- I don't 19 know where the responsibilities begin and end on 20 the asset management agreement. 21 Q So this is a long detour from when I 22 first asked you about Sentinel and whether they 23 had ever issued any other legal liability 24 insurance policies or after -- let me ask it this 25 way: I will represent to you that this policy has</p>	<p>123</p> <p>1 all for legal liability insurance, after the event 2 insurance or judgment insurance? 3 A I know they evaluated a lot of the 4 policies. I didn't have knowledge of the specific 5 alternative policy that was done like this. I did 6 not. 7 Q And did you know they had ever 8 evaluated a legal liability insurance policy, an 9 after the event policy or a judgment insurance 10 policy prior to the time they issued this 11 \$100 million policy that you authorized? 12 A Yes, I believe they have and they do to 13 this day. 14 Q Okay, but I didn't ask you about this 15 day. Stay with me on the questions. It's back in 16 2017. When you approved the policy, name one 17 policy that they had ever evaluated that was a 18 legal liability policy, an after the event policy 19 or a judgment insurance policy prior to the time 20 that they issued this \$100 million policy that you 21 authorized in August 2017? 22 A I wouldn't have specific knowledge, but 23 I believe they were -- or they did evaluate 24 others. 25 Q Based on what?</p>
<p>122</p> <p>1 sometimes been called a legal liability insurance 2 policy, sometimes it has been called an after the 3 event policy, sometimes it's been called a 4 judgment insurance policy. 5 I'm going to say other than this policy 6 that we have been discussing today, has Sentinel 7 Reinsurance ever issued any policy that you would 8 characterize as a legal liability insurance 9 policy, an after the event policy or a judgment 10 insurance policy? 11 A I don't know. 12 Q When you authorized the issuance -- 13 MR. TAYLOR: Andy, can you come to a 14 logical stopping point? We're going to have to 15 hop off here really soon and get relogged in to 16 the court system. 17 MR. CLUBOK: Yeah, that's fine. I'll 18 go no more than about five minutes or so and I'll 19 find a logical stopping and we'll take a break, 20 maybe five or ten, but not ten to eleven -- five 21 to seven, or less. 22 Q Mr. Dondero, when you authorized the 23 issuance of this policy for \$100 million, at that 24 time in your head, were you aware of Sentinel 25 Reinsurance ever previously issuing any policy at</p>	<p>124</p> <p>1 A Their high awareness of this kind of 2 policy, how to structure it, how to get it through 3 the regulators, how to get it through compliance, 4 et cetera. Because I think they had reviewed and 5 looked at numerous other policies that were like 6 this policy. 7 Q But as far as you know, they never 8 issued one like this policy before then, correct? 9 A I don't know. 10 Q And as far as you know, you're unaware 11 of them ever actually issuing a policy like this 12 one prior to this policy being issued, correct? 13 A Correct. I don't have specific 14 awareness. 15 Q And you before had said that you 16 believe there had been a title insurance policy of 17 up to \$65 million that was issued that at least 18 they had some role in. Are you saying that that 19 was before August '17, that \$65 million title 20 insurance policy you mentioned before? Or do you 21 know? 22 A I don't remember the dates, but it -- 23 it was -- it was on or around that time because it 24 was -- it was a significant number of years ago. 25 Q What was the premium for that</p>

<p>125</p> <p>1 \$65 million title insurance policy roughly?</p> <p>2 A I don't know. A few million -- a</p> <p>3 couple few million bucks. Oh, no, wait a minute.</p> <p>4 I'm sorry. Excuse me. Let me -- it was a</p> <p>5 \$65 million premium. It was on the Cheniere</p> <p>6 facility in Houston. It was a</p> <p>7 multi-billion-dollar title policy on their</p> <p>8 \$12 billion facility outside Houston. The premium</p> <p>9 was 65 million, and we shared in some of the</p> <p>10 premium with some other reinsurance companies, but</p> <p>11 the gross amount was in the billions.</p> <p>12 Q Roughly how much of the 65 million</p> <p>13 premium went to Sentinel Reinsurance, roughly?</p> <p>14 A I don't know. But for each dollar of</p> <p>15 premium, it was probably 20 times as much title</p> <p>16 insurance face.</p> <p>17 Q Okay. But what was the face of the</p> <p>18 title insurance that Sentinel Reinsurance issued?</p> <p>19 I'm not asking what all the other insurers or</p> <p>20 reinsurers --</p> <p>21 A I don't know.</p> <p>22 Q My original question to you was, prior</p> <p>23 to issuing this \$100 million face value policy,</p> <p>24 were you aware of any other policy that Sentinel</p> <p>25 Re had issued with a liability of at least</p>	<p>127</p> <p>1 the day-to-day to know.</p> <p>2 MR. CLUBOK: Okay. Let's go ahead and</p> <p>3 take our break now. Let's convene five minutes</p> <p>4 after the Court breaks. Does that work, Clay?</p> <p>5 MR. TAYLOR: Sure. Let's go off the</p> <p>6 record.</p> <p>7 MR. CLUBOK: Oh, sure.</p> <p>8 THE VIDEOGRAPHER: Off record. 2:22.</p> <p>9 (A recess was taken.)</p> <p>10 THE VIDEOGRAPHER: On record. 4:35.</p> <p>11 (Deposition Exhibit 25 marked for</p> <p>12 identification.)</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Mr. Dondero, we're about to show you a</p> <p>15 document that's been marked as Exhibit 25. It is</p> <p>16 a document that has got "Sentinel Reinsurance,</p> <p>17 LTD" at the top, and it's a cover letter that</p> <p>18 says, "Via e-mail" and attaches -- what the cover</p> <p>19 e-mail says are "the revised unaudited financial</p> <p>20 statements of Sentinel Reinsurance as of, and for</p> <p>21 the year ended, December 31, 2016."</p> <p>22 MR. TAYLOR: We can't see that.</p> <p>23 MR. CLUBOK: I understand. We're going</p> <p>24 to make it more accessible here, hopefully. Okay.</p> <p>25 Q Can you see the first page now of</p>
<p>126</p> <p>1 10 million? You mentioned the 65 one, but now</p> <p>2 you're saying you don't really know how much of it</p> <p>3 was Sentinel Re. So I'm just asking you to be --</p> <p>4 to name any policy that you actually are aware of,</p> <p>5 or tell us that you're not really aware of any,</p> <p>6 that were for more than \$10 million that Sentinel</p> <p>7 Re had issued prior to issuing this \$100 million</p> <p>8 policy that you approved in August of 2017.</p> <p>9 A I'm going to stay with the Cheniere</p> <p>10 title policy as my answer, but I don't know the</p> <p>11 specifics.</p> <p>12 Q And you have no idea how much of that</p> <p>13 Cheniere title policy was on Sentinel Re's hands,</p> <p>14 correct?</p> <p>15 A Correct.</p> <p>16 Q And do you know that that was issued</p> <p>17 prior to August 2017?</p> <p>18 A I believe on or about, but I don't know</p> <p>19 the dates.</p> <p>20 Q Is there any other example you can</p> <p>21 think of that even might be a policy that would be</p> <p>22 10 million or more than Sentinel Re has ever</p> <p>23 issued other than potentially its involvement in</p> <p>24 the Cheniere title insurance?</p> <p>25 A I -- no, I wasn't involved enough in</p>	<p>128</p> <p>1 Exhibit 25?</p> <p>2 A Yes.</p> <p>3 Q And Exhibit 25 is a document. It's</p> <p>4 entitled "Sentinel Reinsurance LTD." It's a</p> <p>5 letter that on its face says was sent via e-mail</p> <p>6 to Mr. J.P. Sevilla at SAS Asset Recovery Limited</p> <p>7 from Peter Kranz, CPA, at Beecher Carlson</p> <p>8 Insurance Services, LLC, as Manager for Sentinel</p> <p>9 Reinsurance, Limited.</p> <p>10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q Now, first of all, you know who J.P.</p> <p>13 Sevilla is, right?</p> <p>14 A Yes.</p> <p>15 Q In August 2017 he worked at Highland</p> <p>16 Capital Management?</p> <p>17 A Yes.</p> <p>18 Q And he wore several hats, I take it,</p> <p>19 for different entities?</p> <p>20 A Yes.</p> <p>21 Q And one of them was for an entity</p> <p>22 called SAS Asset Recovery Limited?</p> <p>23 A I can't say for sure whether he worked</p> <p>24 there or not or was just providing services. I</p> <p>25 don't know.</p>

<p>129</p> <p>1 Q Was there a shared services agreement</p> <p>2 between SAS Asset Recovery Limited and Highland</p> <p>3 Capital Management?</p> <p>4 A Yes. I mean, it might not have been</p> <p>5 formal but either informal or formal, but it was</p> <p>6 one of the entities that I believe Highland</p> <p>7 provided services for.</p> <p>8 Q Do you have an ownership stake in SAS</p> <p>9 Asset Recovery Limited?</p> <p>10 A I don't believe so.</p> <p>11 Q What is SAS Asset Recovery Limited?</p> <p>12 A I think they primarily do litigation</p> <p>13 financing. Litigation financing, litigation joint</p> <p>14 venture stuff around the -- around the world.</p> <p>15 Q Who owns SAS Asset Recovery Limited?</p> <p>16 Or who is the beneficial owner of it, I should</p> <p>17 say.</p> <p>18 A I don't know.</p> <p>19 Q You have no idea whatsoever as you sit</p> <p>20 here today?</p> <p>21 A Yes, that's correct.</p> <p>22 Q Isn't it true that --</p> <p>23 A I would -- let me just say that it's</p> <p>24 something you could put on the list for us to get</p> <p>25 you that information, if it's appropriate for us</p>	<p>131</p> <p>1 that's -- like I was saying, I don't know if he's</p> <p>2 representing SAS. I don't know if it's -- I don't</p> <p>3 know what SAS -- I don't know what Sentinel's</p> <p>4 relationship or shared services with SAS is. I</p> <p>5 don't know if Sentinel owns a piece of SAS. I</p> <p>6 don't know the ownership structure and I don't</p> <p>7 know what hat J.P. is wearing when he's, you know,</p> <p>8 part of this correspondence.</p> <p>9 Q Were the activities of SAS Asset</p> <p>10 Recovery Limited known to those at Highland</p> <p>11 Capital Management?</p> <p>12 A They would be known to Scott Ellington.</p> <p>13 I don't know who else besides Scott Ellington</p> <p>14 would know the cases that SAS was involved in.</p> <p>15 Q How do you know that Scott Ellington</p> <p>16 would know about SAS Asset Recovery?</p> <p>17 A It was one of the entities he was</p> <p>18 responsible for.</p> <p>19 Q How do you know that?</p> <p>20 A I -- I just know it.</p> <p>21 Q You were -- did you know when SAS was</p> <p>22 set up?</p> <p>23 A No.</p> <p>24 Q So do you know anything else about SAS</p> <p>25 Asset Recovery other than Scott Ellington was</p>
<p>130</p> <p>1 to get you that information, but I don't know the</p> <p>2 answer.</p> <p>3 Q Who would know the answer?</p> <p>4 A I don't know, but I would find out.</p> <p>5 Q You have absolutely no idea who has any</p> <p>6 ownership interest in SAS Capital -- SAS Asset</p> <p>7 Recovery Limited; is that what you're saying?</p> <p>8 A Correct. It was a complex structure,</p> <p>9 and I don't remember how it shook out at the end</p> <p>10 of the day. But like I said, I'm not being</p> <p>11 evasive. If it's -- you know, give us some time.</p> <p>12 If it's appropriate for us to give you the answer,</p> <p>13 we can get the answer. I just don't know.</p> <p>14 Q Did you ever have any control over SAS</p> <p>15 Asset Recovery Limited in any way?</p> <p>16 A I don't believe so. I don't know</p> <p>17 throughout its history, but I don't believe so.</p> <p>18 Q Was Scott Ellington a beneficial owner</p> <p>19 of SAS Asset Recovery Limited?</p> <p>20 MR. TAYLOR: Objection. Form.</p> <p>21 A I don't know.</p> <p>22 Q Why would SAS Asset Recovery Limited</p> <p>23 have been getting the unaudited financial</p> <p>24 statements of Sentinel Reinsurance?</p> <p>25 A I don't know. I don't know if</p>	<p>132</p> <p>1 involved in it and it was a litigation funder, as</p> <p>2 far as you know?</p> <p>3 A Yeah, I mean, that's really all I know</p> <p>4 about it.</p> <p>5 Q Did you ever receive the financial</p> <p>6 statements of Sentinel Reinsurance?</p> <p>7 A No. I'm curious what -- when you flip</p> <p>8 the page, I'm curious what it's going to say. But</p> <p>9 this was early -- earlier on, I guess.</p> <p>10 Q So -- all right. Let's flip the page.</p> <p>11 The second page of Exhibit 25 is the table of</p> <p>12 contents. The next page, which is also Bates</p> <p>13 labeled, ending with the digits 1069, is the</p> <p>14 Sentinel Reinsurance, Limited, Management</p> <p>15 Discussion and Analysis, dated December 31st,</p> <p>16 2016, or, I suppose, as of December 31st, 2016.</p> <p>17 MR. TAYLOR: Andy, could you blow that</p> <p>18 up a little? It's a little bit hard for us to see</p> <p>19 here.</p> <p>20 Q Can you see it, Jim?</p> <p>21 A It's tough. My vision is not so good</p> <p>22 either.</p> <p>23 Q Is that better?</p> <p>24 A That's better, yeah.</p> <p>25 Q Okay. And you can see that it says</p>

<p>133</p> <p>1 that "For the 12 months ended December 31st, 2016 2 and 2015, Sentinel Reinsurance, Limited had pretax 3 income of \$4.2 million and \$5.1 million, 4 respectively." Do you see that?</p> <p>5 A Yep.</p> <p>6 Q Did you know that Sentinel Insurance's 7 pretax income for the years 2016 and 2015 were 8 approximately a little over 4 million and a little 9 over 5 million, respectively?</p> <p>10 A I did not.</p> <p>11 Q It says the capital and surplus at the 12 end of 2016 was about 17.6 million. Do you see 13 that?</p> <p>14 A Yes.</p> <p>15 Q Did you know that?</p> <p>16 A No, I did not.</p> <p>17 Q Did you have any idea about the income 18 or capital and surplus levels at Sentinel 19 Reinsurance ever?</p> <p>20 A No.</p> <p>21 Q Do you have somebody in your life who 22 would manage an investment like Sentinel 23 Reinsurance, Limited for you, that you had a 24 70 percent stake in?</p> <p>25 A Scott Ellington.</p>	<p>135</p> <p>1 Q When you approved the \$100 million 2 policy in August 2017, did you know what the 3 balance sheet of Sentinel Reinsurance, Limited 4 showed?</p> <p>5 A No.</p> <p>6 Q You can see from this document that it 7 reports that as of the end of 2016, the cash and 8 investments totaled \$5.9 million.</p> <p>9 A Yes.</p> <p>10 Q And you see that there was unearned 11 premiums of about 1.2 million as of the end of the 12 year 2016, right?</p> <p>13 A Yes.</p> <p>14 Q Were you aware of any of that 15 information when you signed off on the 16 \$100 million insurance policy that has been the 17 subject of today's discussion?</p> <p>18 A No.</p> <p>19 Q Did you -- I'm flipping the next page, 20 which says, "Sentinel Reinsurance, Limited, 21 Financial Statements" as of December 31st, 2016. 22 And then on the next page -- I'll scroll down a 23 little so you can see it more easily -- it shows 24 the balance sheets as of December 2016 and 25 December 2015. Do you see that?</p>
<p>134</p> <p>1 Q Okay. It's entirely Scott Ellington 2 who's responsible for managing Sentinel 3 Reinsurance and monitoring it?</p> <p>4 A Yes.</p> <p>5 Q And he's always had that role since its 6 founding?</p> <p>7 A Yes.</p> <p>8 Q And is there any one else at all you 9 know that's involved in Sentinel Reinsurance, 10 Limited, other than Scott Ellington?</p> <p>11 A Not that I'm aware of. If there is, he 12 would know.</p> <p>13 Q Did Scott Ellington ever report 14 anything about the financials of Sentinel 15 Reinsurance to you in any way?</p> <p>16 A I mean, sometimes he would verbally 17 talk about it, but -- you know, like the 18 transaction we were discussing earlier. But other 19 than that, there wasn't a formal reporting process 20 or -- or I wasn't in the loop on documentation 21 such as this.</p> <p>22 Q Did you ever in your life see a 23 document that referred to Sentinel Reinsurance, 24 Limited?</p> <p>25 A I don't believe so.</p>	<p>136</p> <p>1 A Yep.</p> <p>2 Q And do you see where it says 3 "Shareholders' Total Equity," and breaks it down 4 from contributed surplus, unrealized loss, 5 et cetera, and then Total Shareholders' Equity. 6 Do you see that?</p> <p>7 A Yes.</p> <p>8 Q Does that in any way help you remember 9 roughly how much you invested in Sentinel 10 Reinsurance that narrows the range from 1 to 11 200 -- sorry, from 1 to 125 million dollars, as 12 you previously testified?</p> <p>13 A I -- is that -- is that what you're 14 asking me, is 20 or 30 million dollars between 1 15 and 100? Yeah, but I didn't know these numbers 16 specifically.</p> <p>17 Q No, I previously asked you how much you 18 invested in Sentinel Reinsurance, and you said you 19 didn't really know other than it was somewhere in 20 the range of 1 to 125 million dollars. And I'm 21 wondering if, by looking at this balance sheet, it 22 in any way refreshes your recollection or allows 23 you to better narrow the range of how much you 24 invested in Sentinel Reinsurance.</p> <p>25 A I don't -- was it started in this year?</p>

<p>137</p> <p>1 Was it started in '15? I mean, I don't know when 2 exactly it started, but it's looking like there 3 was -- it looks like it was worth 20-odd million 4 dollars. I don't understand the dividend lines, 5 though. I will say that. I don't remember ever 6 getting a dividend out of Sentinel.</p> <p>7 Q Would you have records to show whether 8 or not you ever received a dividend from Sentinel?</p> <p>9 A I mean, I would know if I did. I don't 10 know if Sentinel was part of a holding company or 11 something. Maybe there's a holding company above 12 this. But I can say for sure -- I can say for 13 sure I never received 70 percent of 11.5 or 4.0.</p> <p>14 Q Are you still unable to narrow down how 15 much you invested in Sentinel Reinsurance to 16 anything more definite than somewhere between 17 1 and 125 million dollars?</p> <p>18 A I don't have a recollection. Based on 19 these financials, I would say it's more likely 20 between 1 and 50. I would say that.</p> <p>21 Q Okay. I'm flipping to the next page, 22 and it shows the income statements for 2016 and 23 2015. Have you ever seen this before?</p> <p>24 A No.</p> <p>25 Q Did you have any knowledge of even</p>	<p>139</p> <p>1 see that?</p> <p>2 A Yep.</p> <p>3 Q Any of this ring a bell at all?</p> <p>4 A Nope.</p> <p>5 Q But you would expect Scott Ellington 6 would know all about this?</p> <p>7 A Yes.</p> <p>8 Q And there is no other human being that 9 you can identify who you would expect to know 10 about this?</p> <p>11 A No. Yeah, but again, you know, to the 12 extent that Scott needed help or access to other 13 people, he would know.</p> <p>14 Q Do you know who Andrew Dean is?</p> <p>15 A No.</p> <p>16 Q I'm flipping through the pages here to 17 the page titled "Summary of All Units," and it 18 says, "Underwriting Income," "Premiums written" 19 and "Change in unearned premiums." Do you see 20 that?</p> <p>21 A Yes.</p> <p>22 Q And do you see that it says 23 "Inception-to-Date," the total premiums written 24 were \$6.2 million as of the end of the year 2016, 25 correct?</p>
<p>138</p> <p>1 directionally or approximately the amount of 2 income that Sentinel Reinsurance generated in 2016 3 and 2015?</p> <p>4 A No.</p> <p>5 Q I'm showing you the next page, which is 6 marked "Sentinel Reinsurance, Limited, Statements 7 of Cash Flow" for the periods of 2016 and 2015, 8 and it shows "Net income," "Cash Flows from 9 Investing Activities," and "Cash Flows from 10 Financing Activities." Do you see that?</p> <p>11 A Yep.</p> <p>12 Q And do you see where it shows cash 13 balances as well?</p> <p>14 A Yes.</p> <p>15 Q And here it refers to significant 16 dividends paid in 2016.</p> <p>17 A Yep.</p> <p>18 Q And then it says, "Contributed 19 surplus." Do you have any idea what that refers 20 to?</p> <p>21 A I don't know.</p> <p>22 Q The next page says, "Sentinel 23 Reinsurance, Limited, Supplemental Schedules" as 24 of December 31st, 2016. And the next page shows 25 "Prepaid Expenses and Other Liabilities." Do you</p>	<p>140</p> <p>1 A Yes.</p> <p>2 Q And do you remember previous -- and 3 then it says there's unearned premiums of 4 \$1.228 million. Do you see that?</p> <p>5 A Yes.</p> <p>6 Q So does this information change your 7 view as to whether or not Sentinel Reinsurance had 8 ever issued a policy for more than -- a single 9 policy for more than \$10 million prior to August 10 of 2017?</p> <p>11 A Well, I mean, we only go through end of 12 '16 here. I don't know how rapid the growth was 13 in '17, but it was -- you know, it's clearly -- 14 it's clearly a start-up but it's on a significant 15 trajectory, with the desire probably to have even 16 greater trajectory. So I -- you know, so maybe 17 the bigger policies came later.</p> <p>18 But, anyway, I -- like I said, I wasn't 19 involved in the day-to-day. I don't have 20 awareness, exactly.</p> <p>21 Q Okay. But in 2017, in approximately 22 August, you authorized an insurance policy with a 23 face value of \$100 million, correct?</p> <p>24 A Right. But I'm sure a premium value of 25 much less than 100, right?</p>

<p>141</p> <p>1 Q What was the premium value of the</p> <p>2 policy that had the \$100 million liability,</p> <p>3 roughly?</p> <p>4 A I don't know.</p> <p>5 Q Didn't you previously say you thought</p> <p>6 it was 70 to 80 million dollars in illiquid</p> <p>7 assets?</p> <p>8 A No. I said the amount of illiquid</p> <p>9 assets were 70 to 80, but I don't know what the</p> <p>10 premium structure was, like how much of the net 70</p> <p>11 or 80 was premium. Or -- or, you know, you'd</p> <p>12 mentioned 110 of asset value, which I never heard</p> <p>13 before, but maybe the 110 less the premium is how</p> <p>14 it got to 75 or 80. You know, I don't know the --</p> <p>15 I don't know the structure of the policy.</p> <p>16 Q Why would 70 or 80 million dollars of</p> <p>17 assets be transferred to Sentinel Reinsurance in</p> <p>18 connection with the policy other than for a</p> <p>19 premium payment?</p> <p>20 A I don't know. I mean, that's what I'm</p> <p>21 saying. It's -- but the premiums can take</p> <p>22 different forms, where it's like a first-year</p> <p>23 premium or future premiums, you know, whatever,</p> <p>24 you can segment the premiums. Again, I just -- I</p> <p>25 don't know the structure of the policy, Andy. I</p>	<p>143</p> <p>1 A Yes.</p> <p>2 Q -- to justify the \$100 million policy?</p> <p>3 A Yes.</p> <p>4 Q But you've made no effort to confirm</p> <p>5 that he did that; is that true?</p> <p>6 A Other than talking with my lawyers.</p> <p>7 Like I said, I haven't prepared or refreshed on</p> <p>8 the history here.</p> <p>9 Q Well, as you sit here today, do you</p> <p>10 recall making any effort to ensure that</p> <p>11 Mr. Ellington did any sort of market task to</p> <p>12 ensure that the amount of premium paid for the</p> <p>13 \$100 million policy was consistent with what a</p> <p>14 third-party transaction would have required?</p> <p>15 A Not that I recall at this point.</p> <p>16 Q Who negotiated on behalf of Highland</p> <p>17 Financial Partners and its subsidiaries in setting</p> <p>18 the amount that would be paid for the \$100 million</p> <p>19 insurance policy?</p> <p>20 A Scott Ellington.</p> <p>21 Q Who negotiated on behalf of Sentinel</p> <p>22 Reinsurance in that transaction?</p> <p>23 A You know what, before I say Scott</p> <p>24 Ellington, I -- well, compliance -- I don't know.</p> <p>25 All I know is, like I said, we had to go through</p>
<p>142</p> <p>1 don't know the structure.</p> <p>2 Q Who decided how much premium would be</p> <p>3 paid for the \$100 million face value policy?</p> <p>4 A That would have been the process</p> <p>5 Ellington went through with compliance and with</p> <p>6 the regulators on what was fair and appropriate</p> <p>7 for the risk and then what was comparable to</p> <p>8 third-party transactions.</p> <p>9 Q Did Mr. Ellington do a market check</p> <p>10 against third-party transactions in deciding how</p> <p>11 much premium to pay for the \$100 million face</p> <p>12 value policy?</p> <p>13 A I'm sure -- I'm sure that was part of</p> <p>14 his process and approval in his back-and-forth.</p> <p>15 I'm sure it was. But I don't have specific</p> <p>16 awareness.</p> <p>17 Q Is that because he told you that's what</p> <p>18 he did?</p> <p>19 A It's -- that would have been, I would</p> <p>20 have thought, the starting point -- the logical</p> <p>21 starting point for discussions with compliance and</p> <p>22 the regulators, but I don't have awareness.</p> <p>23 Q So you assumed that Mr. Ellington must</p> <p>24 have done a third-party check on the amounts of</p> <p>25 premium that had to be paid --</p>	<p>144</p> <p>1 compliance, I know we had to work it through the</p> <p>2 regulators also. And when you're on both sides of</p> <p>3 the transaction, the scrutiny is higher, but I</p> <p>4 don't know if -- sometimes organizationally</p> <p>5 compliance will require somebody to be</p> <p>6 representing one party and somebody to be</p> <p>7 representing the other party just to make sure</p> <p>8 there is some separation. And although Scott</p> <p>9 Ellington coordinated the overall transaction, I</p> <p>10 don't know if there was somebody separate</p> <p>11 representing one side or the other or if he</p> <p>12 represented both. I don't know, so I shouldn't</p> <p>13 speculate, but -- but he was the overall architect</p> <p>14 of the transaction.</p> <p>15 Q Did Scott Ellington represent all the</p> <p>16 other parties to the insurance policy other than</p> <p>17 HFP and its subsidiaries and Sentinel Reinsurance,</p> <p>18 as far as you know?</p> <p>19 A "Other parties." I don't know if there</p> <p>20 were other parties to the core of the transaction.</p> <p>21 There might have been approvals from some other</p> <p>22 parties if you're saying there was a DAF note or</p> <p>23 something else. But I believe if there was any</p> <p>24 other parties involved, they would have their</p> <p>25 own -- their approval would be separate. I</p>

<p>145</p> <p>1 just -- I can't say for sure Ellington represented 2 both HFP and Sentinel. I can't say for sure. 3 Q You were requested to provide advice 4 about the assets of Sentinel Reinsurance and 5 what -- how to best maximize their value, correct? 6 A Yes -- or, yeah, it would be on the 7 asset side I would get queried periodically on 8 what to invest in. 9 Q Okay. I'm going to flip ahead a few 10 pages of this Exhibit 25 to a page that says, 11 "Sentinel Reinsurance, Limited, Supporting 12 Schedules," as of December 31st, 2016. 13 A Sure. 14 Q And then the next page has some assets. 15 I'm going to blow this up a little bit. There 16 are, it says here, "Sentinel Reinsurance, Limited, 17 Detailed Investment Schedule," as of 18 December 31st, 2016, and there are four CLOs 19 listed on this page, which is Bates labeled with 20 1081 as the last four digits. Do you see that? 21 A Yes. 22 Q And the first one is an asset called 23 "Grayson CLO LTD 144A." Do you see that? 24 A Yes. 25 Q Do you know what that asset is, Grayson</p>	<p>147</p> <p>1 fall in arrears when the economy weakens and cash 2 is diverted, but generally they pay -- generally 3 they pay flows or dividends. 4 Q Is the Grayson CLO Limited 144A, is 5 that a collection of corporate loans or 6 securitized corporate loans? 7 A Yes. 8 Q And what does the 144A refer to, do you 9 know? 10 A 144A private placement. 11 Q What does that mean to you? 12 A That it's a private placement. It's 13 not a public bond. It's issued under the 144A 14 private placement exemption the SEC has. 15 Q Do you know how much cash over time 16 Sentinel Reinsurance collected with respect to 17 this asset? 18 A No idea. 19 Q Do you know how much they paid for this 20 asset? 21 A No idea. 22 Q Do you know where they got this asset? 23 A No idea. 24 Q There are -- there is another asset 25 here called "Greenbriar CLO LTD" that has a market</p>
<p>146</p> <p>1 CLO LTD 144A? 2 A I think that was an old CLO that we did 3 in the early 2000 period, and -- yes, that's what 4 it looks like. 5 Q And it said as of that date it had a 6 value of \$1.7 million. Do you see that? 7 A Yep. 8 Q And it had a -- do you know if that 9 asset was ever monetized? 10 A I have no idea. 11 Q Do you know if Sentinel Reinsurance 12 still holds that asset today? 13 A I have no idea. 14 Q Do you have any idea if it was ever 15 sold? 16 A No. 17 Q Would an asset like that generate cash? 18 A It would depend on the year. 19 Generally, yes. 20 Q Do you know if any cash has been 21 generated in connection with the Grayson CLO 22 Limited 144A asset? 23 A Over its life, for sure, but at any 24 given year or any given moment, I don't know. 25 They generally pay quarterly, but sometimes they</p>	<p>148</p> <p>1 value of 1.4. Do you see that? 2 A Yes. 3 Q Do you know anything about that asset? 4 A No. I would say for all four listed, I 5 would give you the exact same answers. And I 6 don't know where they came from. They generally 7 produce cash flow, but I don't know in any given 8 particular year, and I couldn't even begin to 9 estimate how much cash over its life, and I don't 10 know where it came from. 11 Q You have heard of the Greenbriar CLO 12 Limited asset recently, haven't you? You've 13 discussed that recently? 14 A Was that the asset that Seery promised 15 to help give to UBS? Was that that asset? 16 Q Well, you heard about an asset called 17 Greenbriar that I believe you offered to provide 18 to UBS in one of your settlement proposals and 19 that is -- also been mentioned in connection with 20 the UBS settlement with Highland. Does that ring 21 a bell? 22 A Yes. Yeah, that is -- it may not be 23 that Greenbriar, I mean, or it may not be that 24 piece, because I think the piece you guys were 25 talking about was larger, but it's essentially the</p>

<p>149</p> <p>1 same security.</p> <p>2 Q The same security. And that security</p> <p>3 that you had offered previously to either turn</p> <p>4 over or pay the value to as part of a proposed</p> <p>5 settlement, is that currently being held by CDO</p> <p>6 Fund?</p> <p>7 A I don't know where it's being held. I</p> <p>8 think -- I don't know. I don't know where --</p> <p>9 it's -- I think the only reason why it was the</p> <p>10 only asset hanging around is I think it couldn't</p> <p>11 be transferred directly, and so I think it might</p> <p>12 have been transferred indirectly versus a</p> <p>13 participation letter. I don't know its history or</p> <p>14 where it is exactly.</p> <p>15 Q Sorry, it couldn't be transferred from</p> <p>16 whom to whom?</p> <p>17 A It was going to be transferred at some</p> <p>18 point, somewhere, at some time, and it just -- it</p> <p>19 couldn't be transferred directly so I think it was</p> <p>20 transferred indirectly via a participation letter.</p> <p>21 That was my recollection on why the Greenbriar was</p> <p>22 still sitting somewhere, wherever that was.</p> <p>23 Q What's a participation letter, as you</p> <p>24 used that term?</p> <p>25 A It's like if you didn't want to sell me</p>	<p>151</p> <p>1 asset?</p> <p>2 A I don't believe I ever talked to Seery</p> <p>3 about Greenbriar at all.</p> <p>4 Q Did you tell any of the directors that</p> <p>5 the Greenbriar asset was subject to a</p> <p>6 participation letter?</p> <p>7 A No, I don't think I discussed it with</p> <p>8 any of them.</p> <p>9 Q Did you discuss that with any of the</p> <p>10 lawyers at the Pachulski firm?</p> <p>11 A No.</p> <p>12 Q Who was the participate- -- who was the</p> <p>13 counterparty in that participation letter?</p> <p>14 A I don't know.</p> <p>15 Q If there --</p> <p>16 A If one exists, Scott Ellington will be</p> <p>17 your person on that.</p> <p>18 Q Anybody else in the world you can think</p> <p>19 of who would know anything about it, other than</p> <p>20 Scott Ellington?</p> <p>21 A No.</p> <p>22 Q This is the last page I'm turning to</p> <p>23 now of Exhibit 25. It's a page entitled "Sentinel</p> <p>24 Reinsurance, Limited, Intercompany Receivables" as</p> <p>25 of December 31, 2016. Do you see that?</p>
<p>150</p> <p>1 your house and go through the change of ownership</p> <p>2 record, redoing a mortgage, whatever, but if you</p> <p>3 signed a participation letter with me that over</p> <p>4 the next five years, whatever appreciation of the</p> <p>5 house would go to me and I would pay the expenses</p> <p>6 of the mortgage for the next five years, where</p> <p>7 we're essentially transferring the</p> <p>8 responsibilities of ownership and you net the</p> <p>9 differences in flows and price at some later date.</p> <p>10 That's what I thought. That's</p> <p>11 typically what our participation letter is and</p> <p>12 that's what I thought was involved in the</p> <p>13 Greenbriar, but I'm not sure.</p> <p>14 Q Who told you that?</p> <p>15 A Scott Ellington, I believe.</p> <p>16 Q When did he tell you that?</p> <p>17 A I don't know, years ago. Like I said,</p> <p>18 I think there was always -- there was always some</p> <p>19 issue with Greenbriar and transferability, I</p> <p>20 believe.</p> <p>21 Q Did you ever see the supposed</p> <p>22 participation letter?</p> <p>23 A No.</p> <p>24 Q Did you tell Jim Seery there was a</p> <p>25 participation letter that affected the Greenbriar</p>	<p>152</p> <p>1 A Yes.</p> <p>2 Q And there's relatively small sums that</p> <p>3 date from November 24th, 2014 through, it looks</p> <p>4 like, July of 2016, the total about \$114,000. Do</p> <p>5 you know anything about this?</p> <p>6 A No.</p> <p>7 Q And then it lists some entities at the</p> <p>8 bottom, Nimitz, Ltd.; Patton, Ltd. Do you know</p> <p>9 what those entities are?</p> <p>10 A No.</p> <p>11 Q Do you know what SS Holdings is?</p> <p>12 A Nope.</p> <p>13 Q Given this balance sheet -- and I'm</p> <p>14 going to go back. And I realize this is as of</p> <p>15 December 2016, but this is being sent -- you can</p> <p>16 see it's -- going back to the first page, it's</p> <p>17 being sent August 16, 2017. That was around the</p> <p>18 time that Sentinel entered into this \$100 million</p> <p>19 policy that you approved, correct?</p> <p>20 A Yes.</p> <p>21 Q And given the information here about</p> <p>22 the balance sheet -- and I'm going to go back to</p> <p>23 the balance sheet page, which ends with Bates</p> <p>24 number 1071 -- how could Sentinel Reinsurance have</p> <p>25 ever made good on a \$100 million insurance policy,</p>

<p>153</p> <p>1 given its balance sheet as of December 2016?</p> <p>2 MR. TAYLOR: I'm going to object to the</p> <p>3 form.</p> <p>4 A Without going over in detail the policy</p> <p>5 itself, you couldn't make a negative judgment. So</p> <p>6 what you have here is two years of very good</p> <p>7 profitability, very good dividend history, very</p> <p>8 good earnings history, very good accretion of</p> <p>9 value. Without knowing the policy itself, the --</p> <p>10 no insurance company underwrites a policy that</p> <p>11 they believe has a chance of paying out</p> <p>12 immediately at full value with no premiums</p> <p>13 received, you know, so there's -- depending upon</p> <p>14 the policy structure, there's premiums, there's</p> <p>15 cushion, there's whatever, and then there's a</p> <p>16 probability associated with the payout and there's</p> <p>17 a timing estimate associated with the payout.</p> <p>18 You can't make a -- I don't believe.</p> <p>19 You can't make a judgment from this to say what</p> <p>20 would or wouldn't be a good, plausible investment</p> <p>21 from here.</p> <p>22 Q Do you know -- did you endeavor to make</p> <p>23 any assessment about the timing of potential</p> <p>24 payments or the likelihood of payments under the</p> <p>25 policy or the timing of the premiums or anything</p>	<p>155</p> <p>1 to make this clear. We're going to have to</p> <p>2 renegotiate that or renege- -- but it was -- it</p> <p>3 was an extensive process. It wasn't -- it was</p> <p>4 not -- it was not a one-week process. It was a</p> <p>5 multiple-month process. I do remember that. It</p> <p>6 wasn't easy.</p> <p>7 Q You've testified many times today that</p> <p>8 Scott Ellington was your sole source of</p> <p>9 information, and only oral, about anything having</p> <p>10 to do with Sentinel, but you just said that many</p> <p>11 people were involved in this process.</p> <p>12 A Well, just in the office, people</p> <p>13 reporting -- it was primarily -- it was</p> <p>14 probably -- it was primarily Surgent and just</p> <p>15 people reporting to him were all running around</p> <p>16 for months going back and forth with Ellington and</p> <p>17 his group, you know.</p> <p>18 Q Sorry, Surgent -- Thomas Surgent, who</p> <p>19 was then the chief of compliance?</p> <p>20 A Yes.</p> <p>21 Q He spent many months analyzing this</p> <p>22 transaction?</p> <p>23 A Yes. The back-and-forth with Ellington</p> <p>24 and, like I said, also the offshore regulators,</p> <p>25 also.</p>
<p>154</p> <p>1 like that before you approved the insurance</p> <p>2 policy?</p> <p>3 A That -- that general underwriting and</p> <p>4 structuring would have been the process that</p> <p>5 Ellington underwent to make it arm's length and to</p> <p>6 also make it compliant with compliance and the</p> <p>7 regulators.</p> <p>8 Q And Ellington would have had to go</p> <p>9 through that both with your internal compliance</p> <p>10 and in some form or fashion to submit to the</p> <p>11 regulators; is that correct?</p> <p>12 A Yes.</p> <p>13 Q And do you know -- and the records</p> <p>14 showing that that occurred, if they did -- if it</p> <p>15 did occur, would it still exist at Highland?</p> <p>16 A Yes. It -- it occurred, and it was an</p> <p>17 extensive multi-month process, and there was a lot</p> <p>18 of back-and-forth.</p> <p>19 Q How do you know that?</p> <p>20 A Because people would talk about it --</p> <p>21 Q What people?</p> <p>22 A -- oh, they're still working on this,</p> <p>23 they are still going with that, compliance needs</p> <p>24 this, the regulators want that, they don't</p> <p>25 understand this, you know, whatever, we're trying</p>	<p>156</p> <p>1 Q Okay. But let's stick with the people</p> <p>2 at Highland. So Thomas Surgent went back and</p> <p>3 forth with Ellington many times over several</p> <p>4 months?</p> <p>5 A Yes.</p> <p>6 Q And you said many people working with</p> <p>7 him. Who specifically worked with Thomas Surgent</p> <p>8 assisting in this effort?</p> <p>9 A See, that's a -- I mean, his area had</p> <p>10 people buzzing on this and different people, I</p> <p>11 think, sticking their fingers in and whatever, but</p> <p>12 I -- beyond the general buzz of his areas and then</p> <p>13 to a lesser extent Ellington's area -- I think</p> <p>14 Ellington was largely handling it for his area.</p> <p>15 But there was a lot of activity. There was a lot</p> <p>16 of -- there was a lot of back-and-forth.</p> <p>17 Q Who specifically other than Tom</p> <p>18 Surgent?</p> <p>19 A I don't know who they were accessing,</p> <p>20 and I don't want to speculate on who on their</p> <p>21 teams were working with them. But Ellington and</p> <p>22 Surgent were both knee-deep in it.</p> <p>23 Q And did you talk to Surgent at any</p> <p>24 point while he was knee-deep in efforts to examine</p> <p>25 the propriety of this \$100 million policy?</p>

<p>157</p> <p>1 A No. I mean, I -- no. He's very 2 capable, very thoughtful. He's a smart -- he's a 3 smart man. He is smart financially even though 4 his background is more on the legal side. He 5 didn't need my help. And, plus, on these kinds of 6 things, it's compliance versus the businessperson. 7 It's better if I don't get involved. 8 Q Is Scott Ellington trustworthy, in your 9 opinion? 10 A Yes. 11 Q Is he honest? 12 A Yes. I think you know that too. 13 Q Do you absolutely trust him to handle 14 this honestly and appropriately? 15 A Yes. I mean, and like I said, when I 16 look at the dividend thing there, those are large 17 dividends, and I'm telling you, I didn't get any. 18 So, you know, but I don't sit here -- I don't sit 19 here worried about the fact that the money was 20 absconded with. I know there's probably a holding 21 company or a funding of some other subsidiary or 22 something. I know there is an explanation to it. 23 I trust there is an explanation to it, but I don't 24 know what it is. 25 Q Is Thomas Surgent trustworthy?</p>	<p>159</p> <p>1 A Thomas. Thomas. I think he's -- this 2 bankruptcy process and the way people behave in 3 bankruptcy I think has disappointed him. 4 Q What makes you say that if you haven't 5 talked to him? 6 A Well, I just -- from other people who 7 do talk to him. 8 Q Who? 9 A Well, the guys -- there are still a 10 bunch of guys here that talk to him. 11 Q Who? 12 A Does it matter? I -- you know. 13 Q Yeah. Who did you hear from that 14 Thomas Surgent feels this way? 15 A You know what, I -- let me think about 16 it, I'll get back to you. Let me think on it. 17 Q No, you just said that you have heard 18 these things that Thomas Surgent is feeling. Who 19 did you hear that from? 20 A Yeah, let me think. It's one of a 21 couple people. Let me boil it down and I'll get 22 back to you. 23 Q Who? 24 A I'll get back to you. I can't remember 25 exactly who.</p>
<p>158</p> <p>1 A Yes. I -- honestly, my experience with 2 him over the years is that he was very 3 trustworthy. I think he is one of the half dozen 4 people whose career has been ruined or corrupted, 5 corrupted by Seery in the whole process, and, you 6 know, whatever. I think he is more distant and 7 less focused and less interested. But I still 8 think he is -- even though I think he is in a very 9 difficult situation at the moment, I think he is a 10 trustworthy person. 11 Q Is Thomas Surgent honest, in your view? 12 A Yes. Although, again, I just have to 13 draw a distinction from -- I haven't talked to him 14 in over a year, and he has been very 15 discombobulated by the bankruptcy process. He was 16 the one who was negotiating with Redeemer for the 17 three weeks before we filed when Mashrum jerked 18 him on the 50 million at 7:00 a.m. in the morning 19 in Delaware. And so I'm not sure he's recovered 20 from that, let alone -- you know, Seery used to 21 work for the estate up until about June, and since 22 then, he has been working for the creditors for -- 23 largely for his own payday. And I think he has 24 been disappointed by that also. 25 Q Sorry, who has been disappointed?</p>	<p>160</p> <p>1 Q Depositions aren't take-home exams. So 2 as you sit here today -- 3 A Okay, but I'm just going to tell -- I'm 4 just going to leave you, then, with I don't 5 remember. 6 Q Who were you thinking said that when 7 you said it? Who were the two candidates? 8 MR. TAYLOR: Objection. Form. 9 A I -- 10 Q Who are the two candidates in your mind 11 that might have been the ones who told you that 12 Thomas Surgent was unhappy? 13 A I'm not going to go there, Andy. 14 MR. TAYLOR: Andy, he doesn't have to 15 speculate. 16 A I'm going to leave it at -- I'm going 17 to leave it at I don't remember or I'll get back 18 to you, if you want. 19 Q You said you would get back to me. Who 20 were the two names that you were thinking of when 21 you said that there are people who still talk to 22 Surgent? 23 A Like I said, I don't want to spec- -- 24 it might be three names. I need to chew on it 25 some more and think about it but at the moment, I</p>

<p>161</p> <p>1 don't remember.</p> <p>2 Q You really have to answer to the best</p> <p>3 of your ability. So who are the names you were</p> <p>4 thinking of?</p> <p>5 MR. TAYLOR: Andy, he doesn't have to</p> <p>6 speculate. He says he can't remember. He doesn't</p> <p>7 have to speculate.</p> <p>8 Q Well, you testified that somebody told</p> <p>9 you something -- well, you testified about what</p> <p>10 Mr. Surgent feels, and you have not spoken to him</p> <p>11 in over a year, correct?</p> <p>12 A That's right. And so think about it.</p> <p>13 It was, you know, multiple people giving multiple</p> <p>14 tidbits. I don't want to -- I don't want to</p> <p>15 speculate or jump to a conclusion. I'll think</p> <p>16 about it some more, but I can't remember or</p> <p>17 attribute it exactly to one person at this moment.</p> <p>18 Q You said there were people who speak to</p> <p>19 Thomas Surgent still. Who are they?</p> <p>20 A Well, I mean, it's most -- most</p> <p>21 everybody in senior management still speaks to him</p> <p>22 so ...</p> <p>23 Q Who?</p> <p>24 A I mean, just most everybody in senior</p> <p>25 management still --</p>	<p>163</p> <p>1 person by name who has ever told you anything</p> <p>2 about how Thomas Surgent feels about the</p> <p>3 bankruptcy, correct?</p> <p>4 A Correct.</p> <p>5 Q So you have no basis for the assumption</p> <p>6 that Thomas Surgent feels a certain way about the</p> <p>7 bankruptcy as you sit here today, correct?</p> <p>8 A That's -- that's what I was beginning</p> <p>9 to realize as I was saying it, that I might be</p> <p>10 overlaying too much of my -- too much of my own</p> <p>11 views or too much of other people's just general</p> <p>12 views or just too much -- I might be reading into</p> <p>13 too much or connecting too many dots. So I don't</p> <p>14 want to go any further down that conjecture.</p> <p>15 Q Okay. Let's close this document,</p> <p>16 please, and let's open up the next document that's</p> <p>17 behind Tab 6. It will be marked as Exhibit 26.</p> <p>18 (Deposition Exhibit 26 marked for</p> <p>19 identification.)</p> <p>20 Q Exhibit 26, when it gets put up on the</p> <p>21 screen, will be a one-page document that</p> <p>22 identifies entities that are connected to Sentinel</p> <p>23 Reinsurance. And here we go. We have it up here.</p> <p>24 First of all, it says that "Multi Strat</p> <p>25 Credit Fund" -- it identifies Multi Strat Credit</p>
<p>162</p> <p>1 Q What are their names?</p> <p>2 A -- speak to him.</p> <p>3 You know, you can look up the org</p> <p>4 chart, Andy. I'm not -- I don't want to speculate</p> <p>5 or point to anybody in particular at this point.</p> <p>6 You know, and really, really part of the reason,</p> <p>7 too, as I was thinking before -- before I would</p> <p>8 speculate or attribute it to one person, I was</p> <p>9 going through it in my mind, like, okay, how much</p> <p>10 of it is my perception, maybe being a little</p> <p>11 sensitive to everything he's been through, and</p> <p>12 then how much of it is did someone truly say, and</p> <p>13 then how much did maybe somebody else put their</p> <p>14 own spin on it.</p> <p>15 And I just don't want -- I don't want</p> <p>16 to go down the --</p> <p>17 Q As you sit here today, you can't</p> <p>18 identify a single person who has told you anything</p> <p>19 about how Thomas Surgent feels in 2021; is that</p> <p>20 correct?</p> <p>21 A That's correct. It would be best to</p> <p>22 talk to him about it. And, you know, you can --</p> <p>23 it would be best to talk to him.</p> <p>24 Q And as you sit here today, you can't</p> <p>25 think of one person -- you can't identify one</p>	<p>164</p> <p>1 Fund, and it says, "Investor, Sentinel</p> <p>2 Reinsurance." Do you see that?</p> <p>3 A Yes.</p> <p>4 Q What does that mean?</p> <p>5 A I've never seen this -- I've never seen</p> <p>6 this page before. Or I've never seen this paper</p> <p>7 before.</p> <p>8 MR. TAYLOR: You don't have to</p> <p>9 speculate.</p> <p>10 Q Well, do you know whether or not</p> <p>11 Sentinel Reinsurance, Limited is an investor in</p> <p>12 Multi Strat Credit Fund LP?</p> <p>13 A I don't know.</p> <p>14 Q In fact, you have seen recently</p> <p>15 documents that show you that Sentinel Reinsurance</p> <p>16 is a redeemer in Multi Strat; isn't that true?</p> <p>17 A I'm trying to -- what documents have I</p> <p>18 seen? And I'm willing to be refreshed on that.</p> <p>19 Yeah, I'm willing to be refreshed on that.</p> <p>20 Q You are aware, as you sit here today,</p> <p>21 that Sentinel Reinsurance is a redeemer in Multi</p> <p>22 Strat, correct?</p> <p>23 A Okay, I'm willing to be refreshed.</p> <p>24 That sounds -- that sounds plausible, potentially</p> <p>25 familiar. If -- do you have a redeemer listing</p>

<p>165</p> <p>1 you could show me that Multi Strat is?</p> <p>2 Q We'll get to that, but I just -- you're</p> <p>3 a 70 percent owner of Sentinel Reinsurance and</p> <p>4 there has been a lot of discussion in the last few</p> <p>5 months about Multi Strat and the redemption and</p> <p>6 potential settlements. And it's fair to say that</p> <p>7 you are aware that Sentinel Reinsurance is a --</p> <p>8 one of the redeemers of Multi Strat Credit Fund,</p> <p>9 correct?</p> <p>10 MR. TAYLOR: He's answered that, and he</p> <p>11 said he is willing to be --</p> <p>12 MR. CLUBOK: That's okay. It's okay.</p> <p>13 MR. TAYLOR: -- refreshed.</p> <p>14 MR. CLUBOK: You don't need to have a</p> <p>15 speaking objection.</p> <p>16 Q But Mr. Dondero, it's correct that over</p> <p>17 the last few months you have seen information that</p> <p>18 demonstrates to you that Sentinel Reinsurance is a</p> <p>19 redeemer in Multi Strat Credit Fund, correct?</p> <p>20 MR. TAYLOR: Objection as to the form</p> <p>21 and it's been asked and answered.</p> <p>22 A I'm willing to be refreshed. And that</p> <p>23 sounds, like I said, plausible and possible.</p> <p>24 Q It's not just plausible and possible.</p> <p>25 As you sit here today, you know that Sentinel</p>	<p>167</p> <p>1 is an entity that Scott Ellington is the</p> <p>2 beneficial owner of?</p> <p>3 A Yeah, I mean, it looks like it. And in</p> <p>4 the detail -- the detail below looks like those</p> <p>5 are the names of the entities that have the</p> <p>6 beneficial ownership. That's what this appears to</p> <p>7 be.</p> <p>8 Q So as you sit here today, you have no</p> <p>9 reason to dispute the fact that you own an entity</p> <p>10 called Patton, Limited that, in turn, is a</p> <p>11 70 percent beneficial owner of Sentinel</p> <p>12 Reinsurance; is that correct?</p> <p>13 A I have no reason to know otherwise. I</p> <p>14 have no reason to dispute that.</p> <p>15 Q And you have no reason to dispute that</p> <p>16 Scott Ellington is the beneficial owner of Nimitz,</p> <p>17 which, in turn, is a 30 percent beneficial owner</p> <p>18 in Sentinel Reinsurance, correct?</p> <p>19 A Correct.</p> <p>20 Q Let's -- did you tell anyone at</p> <p>21 Highland Capital Management ever that you were a</p> <p>22 70 percent owner in Sentinel Reinsurance other</p> <p>23 than Scott Ellington?</p> <p>24 A Not that I -- not that I remember, not</p> <p>25 that I recall.</p>
<p>166</p> <p>1 Reinsurance is one of the redeemers in</p> <p>2 Multi-Strat; isn't that true?</p> <p>3 A Yeah, I'm trying to remember. It's</p> <p>4 like they were an investor. Did they redeem, or</p> <p>5 are they a separate, you know, non-redeemed</p> <p>6 investor, or is some of it split -- I'm willing to</p> <p>7 be educated. I just can't remember the form of</p> <p>8 their investment.</p> <p>9 Q Okay. And on this document that's been</p> <p>10 marked as Exhibit 26 it talks about Patton,</p> <p>11 Limited being a 70 percent beneficial owner. Do</p> <p>12 you see that?</p> <p>13 A Yes.</p> <p>14 Q Is it true that Patton, Limited is an</p> <p>15 entity that you have the beneficial ownership</p> <p>16 interest in?</p> <p>17 A Well, I think I mentioned earlier I</p> <p>18 know that I'm a 70 percent beneficial owner of</p> <p>19 Sentinel. I never knew the name of the entity,</p> <p>20 and if you're telling me the entity is Patton,</p> <p>21 Limited, and it does resemble 70 percent, I --</p> <p>22 okay, I'm willing to be educated on that, but I</p> <p>23 didn't know the name before, but I still don't</p> <p>24 know the name now.</p> <p>25 Q Okay. Do you know that Nimitz, Limited</p>	<p>168</p> <p>1 Q Do you know what Mainspring, Limited</p> <p>2 is?</p> <p>3 A No. I'm willing to be educated, but</p> <p>4 no, I don't.</p> <p>5 Q Why didn't you tell anyone connected</p> <p>6 with Highland, other than Scott Ellington, that</p> <p>7 you were a 70 percent beneficial owner in Sentinel</p> <p>8 Reinsurance?</p> <p>9 A It never came up or no one ever asked.</p> <p>10 Q When you approved the \$100 million</p> <p>11 insurance policy, did you ever make an effort to</p> <p>12 ensure that Thomas Surgent knew that you were a</p> <p>13 70 percent beneficial owner in Sentinel</p> <p>14 Reinsurance?</p> <p>15 A I'm 100 percent certain that Thomas, in</p> <p>16 his team in his process, knew that.</p> <p>17 Q How?</p> <p>18 A He would have -- he would have never</p> <p>19 proved it otherwise, and, again, he was asked to</p> <p>20 prove it because it was two entities related,</p> <p>21 controlled -- whatever the thresholds are for</p> <p>22 properly running something through compliance that</p> <p>23 Ellington was doing, there's no way you would get</p> <p>24 through compliance without disclosing fulsomely,</p> <p>25 completely and transparently what the overlaps</p>

<p>169</p> <p>1 were.</p> <p>2 Q You're assuming all that because that's</p> <p>3 the only way it could have been done properly,</p> <p>4 correct?</p> <p>5 A It's the only way it would have been</p> <p>6 done at all.</p> <p>7 Q Okay. But you didn't see that</p> <p>8 disclosure, you don't have any firsthand knowledge</p> <p>9 of that disclosure occurring, you know nothing</p> <p>10 about that supposed disclosure other than what</p> <p>11 you're assuming happened, correct?</p> <p>12 A Yeah, but again, if you go back to</p> <p>13 Dodd-Frank and the personal liability put in for</p> <p>14 chief compliance officers and the elevation of</p> <p>15 chief compliance officers to the C-suite, it would</p> <p>16 be a -- to do it haphazardly or to do it without</p> <p>17 doing that or knowing that would be a violation of</p> <p>18 compliance and regulations, and he would</p> <p>19 knowingly -- he would be knowingly putting himself</p> <p>20 in harm's way or liability if he were to do it</p> <p>21 without understanding and knowing the players.</p> <p>22 Q And so would you. You would also have</p> <p>23 that same liability under Dodd-Frank that you just</p> <p>24 described that Mr. Surgent would have, given your</p> <p>25 road, correct?</p>	<p>171</p> <p>1 ownership or the control of Sentinel, he would</p> <p>2 have never run it through compliance. The only</p> <p>3 reason to take a transaction like this through</p> <p>4 compliance is because you're being honest and</p> <p>5 forthright about the overlap.</p> <p>6 Q And if you didn't run it through</p> <p>7 compliance honestly and forthrightly, that would</p> <p>8 be a huge problem, correct?</p> <p>9 A If he didn't run it through compliance</p> <p>10 at all, yes.</p> <p>11 Q And if he didn't fully disclose to</p> <p>12 compliance the nature of the affiliation of</p> <p>13 Sentinel Reinsurance, that would be a huge</p> <p>14 problem, correct?</p> <p>15 A Yeah, but it goes back to my testimony</p> <p>16 that I don't think that would be possible.</p> <p>17 Q Understood. But you have not seen any</p> <p>18 documents -- you have never seen a document, not a</p> <p>19 single document that shows Mr. Surgent and the</p> <p>20 compliance team being made aware that Sentinel</p> <p>21 Reinsurance was an affiliated entity; is that</p> <p>22 correct?</p> <p>23 A Yes. I wasn't involved in the process.</p> <p>24 But, again, it's not plausible to go to compliance</p> <p>25 and say, I have a transaction you need to approve</p>
<p>170</p> <p>1 A That's right. That's why I don't do it</p> <p>2 without doing it correctly.</p> <p>3 Q So if you didn't ensure that it was</p> <p>4 known that Sentinel Reinsurance was an affiliated</p> <p>5 entity, there would be a big problem, correct?</p> <p>6 A Well, yeah, I mean -- yes, I guess,</p> <p>7 yes, but there is no reason why it would have</p> <p>8 been -- if it was going to be obfuscated, it</p> <p>9 wouldn't have been pushed through compliance. It</p> <p>10 was pushed through compliance because we were</p> <p>11 being correctly transparent about it.</p> <p>12 Q And that responsibility for ensuring</p> <p>13 that it was known that Sentinel Reinsurance was an</p> <p>14 affiliated entity also fell to Scott Ellington in</p> <p>15 addition to you and Mr. Surgent, correct?</p> <p>16 A Yes.</p> <p>17 Q And if Mr. Ellington obfuscated the</p> <p>18 fact that Sentinel Reinsurance was an affiliated</p> <p>19 entity, that would be a big problem, right?</p> <p>20 A Yes. But you're missing the point. If</p> <p>21 they -- if Ellington was going to do an insurance</p> <p>22 policy with Aon or Chubb or some third party, he</p> <p>23 could have done it unilaterally in 10 minutes</p> <p>24 without ever mentioning a word of it to</p> <p>25 compliance. If he was going to obfuscate the</p>	<p>172</p> <p>1 because there's overlap, but I'm not going to tell</p> <p>2 you what the overlap is. Sign off on it. There</p> <p>3 is just no chance of that happening.</p> <p>4 Q If Mr. Ellington had not done that,</p> <p>5 that would be a huge problem, correct?</p> <p>6 A Yeah, there would have to be some facts</p> <p>7 and circumstances that I don't understand.</p> <p>8 Q Okay, let's look at -- let's look at</p> <p>9 Tab 7A. Tab 7A is an exhibit that will be marked</p> <p>10 as Exhibit 27.</p> <p>11 (Deposition Exhibit 27 marked for</p> <p>12 identification.)</p> <p>13 Q It will take a minute to -- oh, that</p> <p>14 was fast.</p> <p>15 Let me try to make it a little bit more</p> <p>16 sized properly so you can see it, hopefully.</p> <p>17 Exhibit 27 is an e-mail from you at</p> <p>18 your JDondero@HighlandCapital.com e-mail address</p> <p>19 to Tim Cournoyer, also at a HighlandCapital.com --</p> <p>20 A Yes.</p> <p>21 Q -- address; Subject: Re: Consent of</p> <p>22 Managers - SeaOne Holdings LLC, dated January</p> <p>23 2019.</p> <p>24 Do you see that?</p> <p>25 A Yes.</p>

<p>173</p> <p>1 Q Who is Tim Cournoyer?</p> <p>2 A He is one of the -- he was one of the</p> <p>3 internal lawyers at Highland on the corporate</p> <p>4 side, generally, who didn't come over to the new</p> <p>5 entities over here but still works for Seery at</p> <p>6 Highland.</p> <p>7 Q Is he honest?</p> <p>8 A I don't know Tim as well. I don't</p> <p>9 know -- I can't -- I don't have -- I don't know</p> <p>10 him as well to have a strong opinion.</p> <p>11 Q Okay. And in this e-mail at the top of</p> <p>12 the chain you say, "Yes, I approve waiver and</p> <p>13 moving forward." Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Do you remember this exchange?</p> <p>16 A Not specifically, but I can be -- can</p> <p>17 you enlarge this a little bit? I can be</p> <p>18 refreshed, I believe.</p> <p>19 Q Yeah, I'm going to enlarge the e-mail</p> <p>20 that immediately precedes that to which you're</p> <p>21 responding to. And the e-mail that you say, "Yes,</p> <p>22 I approve waiver and moving forward" is a response</p> <p>23 to an e-mail that Mr. Cournoyer -- how do you</p> <p>24 pronounce that name?</p> <p>25 A Cournin (phonetic) I think is how you</p>	<p>175</p> <p>1 Dugaboy's signature."</p> <p>2 And in response to that you say you</p> <p>3 approve the waiver and are moving forward.</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Do you remember this transaction?</p> <p>7 A Yes. I mean, generally, yes.</p> <p>8 Q Describe what you know about it.</p> <p>9 A SeaOne was a venture capital</p> <p>10 investment. The former CEO of EOG had come up</p> <p>11 with a more creative way to ship natural gas</p> <p>12 around the world using -- essentially making a</p> <p>13 radiator out of a 42-inch pipeline. It's much</p> <p>14 better, it's much more efficient, much cheaper</p> <p>15 than LNG, but it's taking two or three times as</p> <p>16 long, as everybody expected, to get any kind of</p> <p>17 industry buy-in, so they were frequently doing</p> <p>18 additional capital raises. Some of them were</p> <p>19 offensive and some of them were defensive.</p> <p>20 We were an early investor -- an earlier</p> <p>21 investor in SeaOne so we had the ability to</p> <p>22 participate in rights offerings or block any</p> <p>23 defensive rights offerings. We just had some</p> <p>24 shareholder protections as an earlier investor.</p> <p>25 And what this back-and-forth here is,</p>
<p>174</p> <p>1 pronounce it.</p> <p>2 Q How?</p> <p>3 A Cournin. I would have said Tim</p> <p>4 Cournin.</p> <p>5 Q Cournin with an "N"?</p> <p>6 A Yes.</p> <p>7 Q So the O-Y-E-R is silent?</p> <p>8 A Yeah, I think so.</p> <p>9 Q Okay. The person that you call Tim</p> <p>10 Cournin sent you an e-mail at 7:10 p.m. on</p> <p>11 January 29th, and it looks like you respond that</p> <p>12 same day, although the time stamp is curious.</p> <p>13 Maybe it's a time zone issue. But in any event,</p> <p>14 Mr. Cournin, as you say, said, "Jim, I reviewed</p> <p>15 the documents that were sent over and left two</p> <p>16 voice mails with Brian Brantley at the Company but</p> <p>17 have not heard back."</p> <p>18 And he goes on to explain how "Each of</p> <p>19 Dugaboy and Sentinel have a preemptive right to</p> <p>20 participate in the new offering." And he said,</p> <p>21 "Please confirm that you are okay waiving the</p> <p>22 right to participate in this round. If you</p> <p>23 approve, please confirm," and he "will work with</p> <p>24 Tara/Sue/Melissa to use your e-signature for the</p> <p>25 Board resolutions and to obtain Sentinel's and</p>	<p>176</p> <p>1 you know, to allow the additional financing to</p> <p>2 occur at the company, we had to waive some of our</p> <p>3 rights.</p> <p>4 Q Okay. And you were the decision maker</p> <p>5 for Dugaboy's decision to participate in the new</p> <p>6 offering?</p> <p>7 A Yeah, I want to be careful here. You</p> <p>8 know, Dugaboy has its own trustee. Sentinel has</p> <p>9 its own management. But I was on the board of</p> <p>10 SeaOne, and I was the resident expert as far as</p> <p>11 SeaOne was concerned. So for decisions involving</p> <p>12 the credit, people would rely on my expertise as</p> <p>13 regarding SeaOne.</p> <p>14 And that's what -- that's what Tim is</p> <p>15 asking for at the bottom of the letter with the</p> <p>16 underline, you know, so I'll go forward, you know,</p> <p>17 and make that specific recommendation to the</p> <p>18 various funds that own it. And he was just going</p> <p>19 through the mechanisms, the signature mechanisms.</p> <p>20 Q You don't say you're going to make a</p> <p>21 recommendation to the various funds. You say you</p> <p>22 approve the waiver and moving forward. Do you see</p> <p>23 that?</p> <p>24 A Yes.</p> <p>25 Q So you didn't have to go check with</p>

<p>177</p> <p>1 anyone. You just had the authority to approve the 2 waiver on behalf of both Sentinel and Dugaboy, 3 correct? 4 A No, I'm not saying that. I approved 5 the waiver and the concept of the waiver, but, 6 again, I'm acting as the investment professional 7 on this particular investment. It doesn't give me 8 carte blanche on the funds that they're in -- that 9 those investments are in. 10 Q I didn't ask that. My question is, 11 specifically with this transaction, you believed 12 that you had the authority to approve the waiver 13 of the right to participate in that new offering 14 on behalf of both Sentinel and Dugaboy, correct? 15 A No. I approve, meaning I agree. You 16 know, that's why I always use "I approve" -- from 17 board positions or from senior lead, because it 18 says I approve or I agree with the waiver. But to 19 the extent that it's investment advice and there 20 is no reason for a trustee to second-guess me, 21 they would trust my investment advice, and that's 22 what Tim is parlaying to the funds themselves at 23 the bottom of the thing there, but just because I 24 approve of the waiver doesn't give me broad 25 authority at independent entities.</p>	<p>179</p> <p>1 without checking with the Sentinel directors; 2 isn't that true? 3 MR. TAYLOR: Objection. Form. 4 A I have no comment on that. I was just 5 approving the company's -- the reasonableness of 6 the company's amendment request. 7 Q I'm going down the e-mail chain here, 8 and it started with, it looks like, an e-mail from 9 Bart Baker of SeaOne Holdings to you that sought a 10 consent of managers for SeaOne Holdings related to 11 the continuation of the capital raise of that 12 company, and they asked you to sign the signature 13 page. Do you see that? 14 A Yes. 15 Q And you then forwarded that to Tim -- 16 A Cournin. 17 Q -- Tim Cournin, as you call him, right? 18 A Yes. 19 Q And Tim said he reviewed the documents 20 and he left voice mails with Brian Brantley and 21 then he explained the transaction and he notes 22 about these preemptive rights that Dugaboy and 23 Sentinel have, and asked you to confirm that you 24 were okay waiving the rights to participate in 25 this round on behalf of Sentinel and Dugaboy,</p>
<p>178</p> <p>1 Q Right, but you didn't -- you just 2 responded to Tim's e-mail. You didn't check with 3 anyone before responding. Correct? 4 A Well -- 5 Q Let me break this up. You have never 6 spoken to a director of Sentinel, as far as you 7 know, correct? 8 A That's -- that's correct. 9 Q So you didn't check in with the 10 directors of Sentinel before you told Tim that you 11 were okay waiving the right to participate in this 12 round on behalf of Sentinel, correct? 13 A That's correct. But that's typical. 14 If you're the investment manager -- like we were 15 saying before, we do portfolios of bank loans. 16 Companies need amendments all the time. That 17 would be part of the normal investment process. 18 We wouldn't call separate accounts or managements 19 at CalPERS to tell them, you know, we were 20 approving an amendment at Caesar's or Toys-R-Us or 21 something. 22 MR. CLUBOK: So move to strike 23 everything after "that's correct". 24 Q My simple question to you is, for this 25 transaction, you had the right to approve it</p>	<p>180</p> <p>1 correct? 2 A Yes, overall. And you can see I -- 3 again, I'm approving it in general from a business 4 perspective. That's what it says, "Yes, I approve 5 the waiver and moving forward." 6 Q Okay. And you made that statement 7 without checking in with any director of Sentinel, 8 correct? 9 MR. TAYLOR: Objection. Asked and 10 answered. 11 A Yeah, correct. I didn't talk to any of 12 the -- I didn't, nor would I have, in normal 13 course, expected to for any accounts that we 14 manage. 15 Q And you didn't speak to anyone at 16 Dugaboy either before telling Tim that you 17 approved of the waiver on behalf of Dugaboy, 18 correct? 19 A That's correct. 20 Q And by the way, previously you said 21 that in addition to satisfying internal 22 compliance, you also had to satisfy regulators for 23 the insurance policy that was issued? 24 A Yes. 25 Q What specific regulators are you</p>

<p>181</p> <p>1 talking about?</p> <p>2 A The Cayman reinsurance regulators do</p> <p>3 some of the analysis and underwriting that you</p> <p>4 were speaking of earlier in terms of making sure</p> <p>5 the structure, the potential paths, and the</p> <p>6 premiums and the assumptions and the probabilities</p> <p>7 are reasonable also, especially if it is an</p> <p>8 outsized policy for a company or if the company is</p> <p>9 in a high-growth state, which Sentinel was. And</p> <p>10 so that's why I know Ellington was in</p> <p>11 contemporaneous discussions with them at the same</p> <p>12 time he was getting the transaction through</p> <p>13 compliance.</p> <p>14 Q So, first of all, this was an outsized</p> <p>15 policy, given Sentinel Re's history, correct?</p> <p>16 A I mean, it's outsized or larger than</p> <p>17 what they had done historically.</p> <p>18 Q And, second of all, Sentinel Re, based</p> <p>19 on the financial statements, we showed was not in</p> <p>20 the high growth, but they were actually</p> <p>21 contracting 2016 as compared to 2015; isn't that</p> <p>22 right?</p> <p>23 A No. No, they were growing on all</p> <p>24 measures. Their capital just shrunk because of</p> <p>25 the dividends.</p>	<p>183</p> <p>1 making up for it in growth," you're basing that</p> <p>2 solely on the fact that this \$100 million policy</p> <p>3 was issued and no other information that you have,</p> <p>4 correct?</p> <p>5 A I haven't seen the financials for '17</p> <p>6 or '18, so I don't know what else they were doing.</p> <p>7 Q Well, you just said, "it looks like</p> <p>8 they were making up for it in growth in 2017."</p> <p>9 A Well, yeah, based on -- based on what</p> <p>10 you have been telling me, the policy was done in</p> <p>11 August of '17 and it was a larger policy.</p> <p>12 Q When you say "it looks like they were</p> <p>13 making up for their lack of growth in 2016,"</p> <p>14 you're solely basing that on the issuance of this</p> <p>15 \$100 million policy and nothing else that you're</p> <p>16 aware of as you sit here today, correct?</p> <p>17 A That's right. I haven't seen the '17</p> <p>18 or the '18 or '19 or '20 financials.</p> <p>19 Q Okay. But you have seen financials</p> <p>20 that show you they contracted from 2016 as</p> <p>21 compared to 2015, correct?</p> <p>22 A Yes.</p> <p>23 MR. CLUBOK: Let's put up Exhibit --</p> <p>24 the document that is behind Tab 8. It will be</p> <p>25 marked as Exhibit 28.</p>
<p>182</p> <p>1 Q Well, their pretax income was shrinking</p> <p>2 from 2016 versus 2015, right?</p> <p>3 A Okay, all right. Yes, okay.</p> <p>4 Q And their balance sheet shrunk between</p> <p>5 2016 as compared to 2015, right?</p> <p>6 A Okay, yes, but they are still in the</p> <p>7 high growth mode.</p> <p>8 Q What was one measure that they were</p> <p>9 growing in in 2016 compared to 2015 if it's not</p> <p>10 balance sheet, income, capital? Name one measure</p> <p>11 that causes you to say that they were high growth?</p> <p>12 A There's an effort in futzpah, footnote</p> <p>13 on page 7.</p> <p>14 MR. TAYLOR: Andy, if you're going to</p> <p>15 ask him about a document, I would ask that you put</p> <p>16 it up in front of him.</p> <p>17 Q There was a footnote on page 7 of what</p> <p>18 document?</p> <p>19 A I'm joking. I'm joking, Andy. I said</p> <p>20 it was an effort in futzpah, chutzpah, footnote on</p> <p>21 page 7. But no, I mean, it was -- that was the</p> <p>22 ambition and that was the plan. If it hit a lull</p> <p>23 in 2016, it looks like they were making up for it</p> <p>24 in growth in 2017.</p> <p>25 Q When you say "it looks like they were</p>	<p>184</p> <p>1 (Deposition Exhibit 28 marked for</p> <p>2 identification.)</p> <p>3 Q This document, when it gets up, is an</p> <p>4 e-mail from Katie Irving to Sam Dawson, Dylan</p> <p>5 Wiltermuth, copy J.P. Sevilla and Matt DiOrio;</p> <p>6 Subject: Entity restructure - Sentinel, and it's</p> <p>7 dated April 10th, 2019.</p> <p>8 I'll show you the top of that document</p> <p>9 so you can see that. Do you see all that at the</p> <p>10 top of Exhibit 28?</p> <p>11 A Yes.</p> <p>12 Q Okay. I'm going to skip the e-mail</p> <p>13 part, but I just want to -- there is an attachment</p> <p>14 here that says "SAS" and "Sentinel Final Structure</p> <p>15 as of 9 April 2019, a PowerPoint." And that</p> <p>16 attachment, I'm flipping down, it's a -- the first</p> <p>17 attachment, which is the structure -- "Offshore</p> <p>18 Fund Structure" of SAS, is on the page that ends</p> <p>19 Bates labeled 3125 of Exhibit 28.</p> <p>20 Do you see that?</p> <p>21 A Yes.</p> <p>22 Q And I'm going to try to make it so it's</p> <p>23 as easy as possible to read. First of all, this</p> <p>24 is an SAS structure not Sentinel, SAS. And do you</p> <p>25 see where it talks about "USP1," "four USPs" and</p>

<p>185</p> <p>1 then "USP2" on the right?</p> <p>2 A Yes.</p> <p>3 Q Fair to say that you are one of these</p> <p>4 USPs?</p> <p>5 A No, it's not fair to say. I have no</p> <p>6 idea.</p> <p>7 Q You have no idea. Okay.</p> <p>8 Do you recognize any of the names on</p> <p>9 this org chart for SAS structure as of April 9,</p> <p>10 2019?</p> <p>11 A No, I do not.</p> <p>12 Q Have you ever heard of Sebastian</p> <p>13 Clarke, Limited?</p> <p>14 A No.</p> <p>15 Q Did you know that Matt DiOrio was a</p> <p>16 director of Sentinel Reinsurance?</p> <p>17 A I did not.</p> <p>18 Q Did you ever speak with Matt DiOrio</p> <p>19 about Sentinel Reinsurance?</p> <p>20 A No.</p> <p>21 Q Did you -- did you ever speak to Matt</p> <p>22 DiOrio in the last two years?</p> <p>23 A I spoke to him a month ago. He was the</p> <p>24 point person on some of the shared services</p> <p>25 agreements with the bank, and so I was working</p>	<p>187</p> <p>1 chart, you get to where it says "70 percent" value</p> <p>2 for Sentinel Re at the bottom?</p> <p>3 A Yes.</p> <p>4 Q And USP1 goes down, and there is</p> <p>5 30 percent value. Do you see that?</p> <p>6 A Yep.</p> <p>7 Q And fair to say that under this chart</p> <p>8 Mr. Ellington is USP1 and you are USP2?</p> <p>9 A I don't know, and I haven't seen this</p> <p>10 before.</p> <p>11 Q Are there any other U.S. partners</p> <p>12 invested in Sentinel, other than you and</p> <p>13 Mr. Ellington, to your knowledge?</p> <p>14 A I've never seen this before. I don't</p> <p>15 have an awareness of this, that even USP means</p> <p>16 U.S. partner.</p> <p>17 Q Okay. But you are -- you do have an</p> <p>18 awareness that Patton was an entity that you owned</p> <p>19 70 percent of Sentinel Re through, correct?</p> <p>20 MR. TAYLOR: Objection. Form.</p> <p>21 A If that's the same Patton as the one</p> <p>22 that we saw in the Sentinel structure.</p> <p>23 Q Okay. And you're saying, as you sit</p> <p>24 here today, you believe you have no relationship</p> <p>25 whatsoever with SAS?</p>
<p>186</p> <p>1 with him on those.</p> <p>2 Q Is he working with you at your new</p> <p>3 venture?</p> <p>4 A He is at -- yeah, he works at whatever</p> <p>5 it's called, SkyBridge, SkyGate, whatever,</p> <p>6 whatever it's called.</p> <p>7 Q So he has an office in the same</p> <p>8 building, although on a different floor, than the</p> <p>9 building you're sitting in today?</p> <p>10 A Yes.</p> <p>11 Q Have you ever talked to Matt DiOrio</p> <p>12 about SAS?</p> <p>13 A No.</p> <p>14 Q I'm going to turn to the next page.</p> <p>15 The next page in this document, Exhibit 28, is</p> <p>16 another chart, and this is for the Sentinel</p> <p>17 structure as of April 9, 2019. Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Now, here you are USP2, correct?</p> <p>20 A I've never seen this before. I don't</p> <p>21 know if you can make that statement just from --</p> <p>22 the Patton, Limited, I guess, is the same Patton</p> <p>23 on the other page, but I don't know how that</p> <p>24 connects to USP2.</p> <p>25 Q Well, when you go down USP2, down this</p>	<p>188</p> <p>1 A This is the first time I've seen</p> <p>2 this -- can you go back to the page before for a</p> <p>3 second?</p> <p>4 (Witness reviewing document.)</p> <p>5 A Even looking at this, I can't figure</p> <p>6 this out. Do we get these exhibits as part of the</p> <p>7 deposition?</p> <p>8 Q I don't know. Why do you ask?</p> <p>9 A I'd like to spend more time looking at</p> <p>10 this.</p> <p>11 Q Well, as you sit here today, are you</p> <p>12 aware -- are you testifying that as far as you</p> <p>13 know, you have no connection whatsoever to SAS?</p> <p>14 A I mean, that's how I understood it,</p> <p>15 which is it looks like this was the older</p> <p>16 structure. I mean, I'm trying to -- I'm trying to</p> <p>17 figure this out and it's --</p> <p>18 Q How do you know it is the older</p> <p>19 structure?</p> <p>20 A Well, because that's how it was</p> <p>21 presented and that's as of '19, and you have got a</p> <p>22 proposed structure a page later, right?</p> <p>23 Q Oh, no, no, this is "SAS Structure" and</p> <p>24 the next page is "Sentinel Structure."</p> <p>25 A Right, but isn't the next structure a</p>

<p>189</p> <p>1 combination of the two or no?</p> <p>2 Q No. It's -- well, yes, it looks</p> <p>3 like -- ah, it look like SAS Holdings is involved</p> <p>4 somehow in Sentinel. Actually, now that you</p> <p>5 mention it, it looks like SAS Holdings is somehow</p> <p>6 connected. Does any of that ring a bell with you?</p> <p>7 A No, none of this rings a bell. I</p> <p>8 didn't know it was restructured, and I can't make</p> <p>9 heads of tails out of the prior restructuring.</p> <p>10 But hold on a second. So in a day or two when we</p> <p>11 get the deposition transcript, aren't the exhibits</p> <p>12 included or no?</p> <p>13 MR. TAYLOR: They are.</p> <p>14 THE WITNESS: They are. Okay, good.</p> <p>15 All right.</p> <p>16 Q It may be.</p> <p>17 A Yeah, Clay is saying they are. I just</p> <p>18 want to be able to look at this in more detail</p> <p>19 then.</p> <p>20 MR. TAYLOR: Andy, is this a Highland</p> <p>21 Capital document?</p> <p>22 MR. CLUBOK: It is a Highland Capital</p> <p>23 document produced by Highland Capital, Bates</p> <p>24 labeled.</p> <p>25 Q So as you sit here today, having seen</p>	<p>191</p> <p>1 Q By the way, on the chart for Sentinel,</p> <p>2 it shows that you have a 70 percent value, but it</p> <p>3 says 91 percent vote. Do you see that?</p> <p>4 A Yes.</p> <p>5 Q Do you know why you have a greater</p> <p>6 voting share than your economic benefit in</p> <p>7 Sentinel as it's set forth in this chart?</p> <p>8 A No. Like I said, that's why I can't</p> <p>9 make heads or tails of this. Like I can't --</p> <p>10 like, look a little further right, where it's</p> <p>11 99 percent of value, 1 percent of the vote. I</p> <p>12 can't -- I can't seem to add up the value numbers</p> <p>13 or the vote numbers. I must be missing something.</p> <p>14 I couldn't do it on this chart or the other chart.</p> <p>15 That's why I would like to review them in more</p> <p>16 detail.</p> <p>17 Q Yeah, but as you sit here today, are</p> <p>18 you aware generally that you have a greater voting</p> <p>19 interest in Sentinel than you do an economic</p> <p>20 interest?</p> <p>21 A No, I would have guessed it was 70/30</p> <p>22 for both.</p> <p>23 Q Was there a law firm that helped you</p> <p>24 set up Sentinel Reinsurance, that you're aware of?</p> <p>25 A I do not know.</p>
<p>190</p> <p>1 this, as far as you know, you're not aware of any</p> <p>2 connection you had with SAS; is that correct?</p> <p>3 A I thought the ownership of SAS was --</p> <p>4 didn't flow through to Scott and I. I thought</p> <p>5 there was some fee, some profitability sharing</p> <p>6 potentially, but I thought the ownership was owned</p> <p>7 by some -- to avoid operating a business offshore,</p> <p>8 sometimes I think there's charitable entities and</p> <p>9 stuff that are the owner for name purposes, and</p> <p>10 that's how I thought SAS was structured, where if</p> <p>11 there -- it would be possible to get some</p> <p>12 incentives or compensation out of it but that the</p> <p>13 ownership wasn't with Scott and I. That was my</p> <p>14 memory, but, you know --</p> <p>15 Q Okay. But you believe that you had</p> <p>16 some economic interest in SAS; is that correct?</p> <p>17 A You know, potentially, you know, but --</p> <p>18 I mean, but as far as I know, there hadn't been a</p> <p>19 lot of realizations there.</p> <p>20 Q Have you ever received any economic</p> <p>21 benefit from SAS, as far as you know?</p> <p>22 A No, I have not.</p> <p>23 Q Has Scott Ellington, as far as you</p> <p>24 know?</p> <p>25 A As far as I know, no.</p>	<p>192</p> <p>1 Q Was there ever an analysis done, to</p> <p>2 your knowledge, of how much Sentinel Reinsurance</p> <p>3 would owe if UBS's trial court decision was</p> <p>4 upheld?</p> <p>5 MR. TAYLOR: I'm just going to object</p> <p>6 to form.</p> <p>7 A I don't know.</p> <p>8 Q Do you know how much total payout there</p> <p>9 has been from the insurance policy for any of the</p> <p>10 purposes that you said that the policy was set up</p> <p>11 for?</p> <p>12 A I do not know.</p> <p>13 MR. CLUBOK: I think this is a good</p> <p>14 time to take a break.</p> <p>15 MR. TAYLOR: That's good. So we have</p> <p>16 to take another one at 6:00. Let's go off the</p> <p>17 record.</p> <p>18 THE VIDEOGRAPHER: Off record. 6:03.</p> <p>19 (A recess was taken.)</p> <p>20 THE VIDEOGRAPHER: On record. 6:24.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Mr. Dondero, we're going to show you</p> <p>23 what's previously been marked as Exhibit 1. It is</p> <p>24 an e-mail from Isaac Leventon to Chris Dunn,</p> <p>25 D-U-N-N, dated October 26, 2017, with an</p>

<p>193</p> <p>1 attachment called UBS_ATE.PDF. 2 Do you see that? 3 A Yes. 4 Q And Mr. Leventon said -- first of all, 5 who is Chris Dunn? 6 A I believe he is one of the accountants 7 who used to work at Highland. 8 Q Okay. And does he work with you now? 9 A I don't believe so. I don't recognize 10 that name. 11 Q And Mr. Leventon says to Mr. Dunn -- 12 "Subject: UBS - PRIVILEGED." Do you see that? 13 A Yes. 14 Q And he says, "Please see attached. 15 Please label all communications related to this 16 project as Privileged as all documents are being 17 requested of the Legal Team." 18 Do you see that? 19 A Yes. 20 Q And just scrolling down, there's 21 nothing else in the cover e-mail, and I'm going to 22 show -- and I take it you have never seen this 23 e-mail before? 24 A No. No, I have not. 25 Q Okay. So I'm going to show you the</p>	<p>195</p> <p>1 Do you see that? 2 A Yes. 3 Q And that's your signature, correct? 4 A Yeah, or my assistant's, it looks like. 5 It is either my signature or my assistant's. 6 Q Well, it's an authorized signature by 7 you, correct? 8 A Yes. 9 Q And that's on behalf of one of the 10 insureds, Highland CDO Opportunity Master Fund, 11 LP, correct? 12 A Yeah. Do you want me to read the 13 signature lines? You'll need to zoom in for me. 14 But whoever it's signed for, it's signed for, I 15 guess. 16 Q Okay. And it's also signed on behalf 17 of Highland CDO Hold Company, correct? 18 A Highland CDO Holding Company, yes. 19 Q And again, you signed on behalf of 20 Highland CDO Holding Company as another one of the 21 insureds under the policy, correct? 22 A I don't know what the involvement is of 23 the different entities, if they're all the insured 24 or they're just somehow -- somehow involved in the 25 agreement, but yes, I'm signing for those various</p>
<p>194</p> <p>1 attachment and see if it refreshes your 2 recollection. Let me get this a little bit 3 smaller here. 4 This is a document -- the attachment is 5 the legal liability insurance policy that we have 6 been talking about today. This is the first page 7 of it, where it's called "Legal Liability 8 Insurance Policy" in blue letters on the first 9 page. 10 Do you see that? 11 A Yes. 12 Q And I want to go -- I'm going to go 13 through some of the policy with you. I'm going to 14 flip first to the very end, the last page, the 15 signature page. And do you see where it says 16 "Insurer: Sentinel Reinsurance, Limited," and it 17 says, "Andrew Dean, Director"? 18 A Yep. 19 Q And then do you see where it says 20 "Insureds," and the first insured is Highland CDO 21 Opportunity Master Fund, LP. And it says that you 22 are signing on behalf of CDO Opportunity Master 23 Fund by CDO Opportunity Fund, by CDO Opportunity 24 GP, by Highland Capital Management and by Strand 25 Advisors.</p>	<p>196</p> <p>1 different funds. 2 Q Well, so you sign this document on 3 behalf of Highland CDO Opportunity Master Fund, 4 LP, correct? 5 A Yes. 6 Q And you sign this document on behalf of 7 Highland CDO Holding Company, correct? 8 A Yes. 9 Q And you sign on behalf of Highland 10 Special Opportunities Holding Company, correct? 11 A Yes. 12 Q And you were the sole director of SOHC 13 at the time, right? 14 A I -- I -- probably. I don't know. 15 Q And you were the sole director of 16 Highland CDO Holding Company at the time, correct? 17 A I don't know. 18 Q Do you know -- can you name another 19 director of Highland CDO Holding Company? 20 A No. 21 Q And you were -- it says you were 22 president. Is that president of Highland CDO 23 Opportunity Master Fund, LP? 24 A I don't know. 25 Q Or is it president of Strand Advisors?</p>

<p>197</p> <p>1 A I don't know.</p> <p>2 Q Were you president of Strand Advisors</p> <p>3 at that time?</p> <p>4 A Yes, I would have been. Yeah, if it</p> <p>5 had a president, yes.</p> <p>6 Q In August of 2017, did you have</p> <p>7 authority to sign a document like this on behalf</p> <p>8 of Strand Advisors?</p> <p>9 A I assume so.</p> <p>10 Q And in August of 2017, did you have</p> <p>11 authority to sign a document like this on behalf</p> <p>12 of Highland Capital Management?</p> <p>13 A I assume so.</p> <p>14 Q In August 2017 did you have authority</p> <p>15 to sign a document like this on behalf of Highland</p> <p>16 CDO Opportunity GP, LLC?</p> <p>17 A I believe so.</p> <p>18 Q In August of 2017 did you have</p> <p>19 authority to sign the insurance policy on behalf</p> <p>20 of Highland CDO Opportunity Fund GP?</p> <p>21 A I believe so.</p> <p>22 Q In August of 2017 did you have the</p> <p>23 authority to sign the insurance policy on behalf</p> <p>24 of Highland CDO Opportunity Master Fund, LP?</p> <p>25 A I believe so.</p>	<p>199</p> <p>1 when making the decision to sign on SOHC's behalf?</p> <p>2 A I don't know. I don't remember.</p> <p>3 Q Did you believe at the time you signed</p> <p>4 this document you had fiduciary duties to Highland</p> <p>5 CDO Holding Company?</p> <p>6 A I don't know. I don't remember.</p> <p>7 Q At the time you signed this document,</p> <p>8 did you have fiduciary duties to Highland CDO</p> <p>9 Opportunity Master Fund that you took into account</p> <p>10 before you signed it?</p> <p>11 A I don't know. I don't remember.</p> <p>12 Q Do you believe that you had any -- in</p> <p>13 August of 2017 the UBS litigation was still going</p> <p>14 on, correct?</p> <p>15 A I think I testified I believe it was</p> <p>16 dormant.</p> <p>17 Q Well, in fact, in August of 2017 UBS</p> <p>18 had just defeated Highland and the other</p> <p>19 defendants' motion for summary judgment; isn't</p> <p>20 that true?</p> <p>21 A Like I said, I don't know. My belief</p> <p>22 was it was dormant.</p> <p>23 Q Did you believe that you had any</p> <p>24 fiduciary duties to consider to UBS, as a</p> <p>25 potential creditor of SOHC and CDO Fund, when you</p>
<p>198</p> <p>1 Q In August of 2017 did you have the</p> <p>2 authority to sign on behalf of Highland CDO</p> <p>3 Holding Company?</p> <p>4 A I believe so.</p> <p>5 Q And fair to say that in August of 2017</p> <p>6 you had the authority to sign off on this</p> <p>7 insurance policy on behalf of Highland Special</p> <p>8 Opportunities Holding Company, correct?</p> <p>9 A I believe so.</p> <p>10 Q And before you signed off on this</p> <p>11 \$100 million insurance policy, did you take care</p> <p>12 to familiarize yourself with the terms of it?</p> <p>13 A No.</p> <p>14 Q Did you have a fiduciary duty at the</p> <p>15 time to Highland Special Opportunities Holding</p> <p>16 Company when you signed this policy?</p> <p>17 A I -- fiduciary -- as a registered</p> <p>18 investment advisor, I assume -- I assume we did.</p> <p>19 I don't know -- to the extent the fund doesn't</p> <p>20 exist anymore, I -- I don't know the answer. Let</p> <p>21 me just say that.</p> <p>22 Q Well, when you acted in August 2017 on</p> <p>23 behalf of SOHC, which is the shorthand for Special</p> <p>24 Opportunities Holding Company, did you believe</p> <p>25 that you had fiduciary duties you had to consider</p>	<p>200</p> <p>1 signed this document in August of 2017?</p> <p>2 MR. TAYLOR: Objection. Form.</p> <p>3 Q Okay. I'm going to break it down. In</p> <p>4 August of 2017, did you believe that you owed any</p> <p>5 fiduciary duties at all to UBS as a creditor or</p> <p>6 potential creditor of Highland Special</p> <p>7 Opportunities Holding Company?</p> <p>8 A I -- I do not -- I do not believe or</p> <p>9 recall believing that I had any fiduciary</p> <p>10 responsibility to UBS.</p> <p>11 Q With respect to its status as a</p> <p>12 creditor or potential creditor of SOHC, correct?</p> <p>13 A Yes.</p> <p>14 Q And the same answer for Highland CDO</p> <p>15 Opportunity Master Fund?</p> <p>16 A Yes.</p> <p>17 Q Same answer for Highland Financial</p> <p>18 Partners?</p> <p>19 A Yes.</p> <p>20 Q You now know, sitting here today, that</p> <p>21 a Court has found that SOHC and CDO Fund</p> <p>22 collectively owe to UBS over \$500 million, plus</p> <p>23 interest, at the time this insurance policy was</p> <p>24 signed, correct?</p> <p>25 A No, I don't know that.</p>

<p>201</p> <p>1 Q Well, you know that there has been a 2 judgment after a trial that found SOHC and CDO 3 Fund liable to UBS for over \$500 million, plus 4 accumulated interest, since 2009, correct? 5 A I don't know the specifics of the 6 award, but generally I know there is a significant 7 award. 8 Q Well, you know generally that the award 9 today totals roughly a billion dollars or more, 10 correct? 11 MR. TAYLOR: Objection. Form. 12 A Again, I don't know the mix, I don't 13 know the specifics. You mentioned a minute ago a 14 total to 550, and then you said it was a billion. 15 So I don't know -- I don't know the details and 16 the specifics. 17 Q Okay. Let's make it very simple. As 18 you sit here today, you know that there is a 19 pending judgment against SOHC and CDO Fund for a 20 total of over a billion dollars, including 21 interest, correct? 22 A I -- I don't know. And I don't know 23 if -- a pending judgment, I don't know if it's 24 appealable, I don't know if it is being appealed. 25 I have no idea.</p>	<p>203</p> <p>1 is in favor of UBS? 2 A I have not. 3 Q Do you feel you currently owe any 4 fiduciary duties to UBS in your capacity as 5 director of SOHC? 6 MR. TAYLOR: Objection. Assumes facts 7 not in evidence. 8 MR. CLUBOK: Okay. Strike that. 9 Restate that. 10 Q I take it you have recently resigned 11 your position as director of SOHC? 12 A I believe so. 13 Q That was done just within the last week 14 or so? 15 A I believe so. 16 Q Prior to resigning as director of SOHC, 17 did you ever consider that you had fiduciary 18 duties owed to UBS in connection with the judgment 19 entered against SOHC on behalf of UBS? 20 A I -- I don't recall. 21 Q Are you currently a director of 22 Highland's -- sorry. 23 Do you currently have any role in 24 Highland CDO Opportunity Master Fund? 25 A I don't know.</p>
<p>202</p> <p>1 Q You have absolutely no idea if there is 2 an outstanding judgment right now against SOHC and 3 CDO Fund for approximately a billion dollars in 4 favor of UBS? That's your testimony? 5 A You said a minute ago a pending 6 judgment. Now you're saying it's a judgment. I 7 have no idea what the legal status is. 8 Q Do you know that there was a judgment 9 entered against SOHC and CDO Fund for over a 10 billion dollars, including interest, in favor of 11 UBS in connection with the New York litigation? 12 A I don't know the specifics. I don't 13 know the specific counterparties. 14 Q Do you know? So is that a no to my 15 question? 16 A Yes. I don't know. 17 Q Have you made any effort to consider 18 whether or not SOHC owes any money currently to 19 UBS? 20 A I have not. 21 Q Have you made any effort to consider 22 whether currently CDO Fund owes any money to UBS? 23 A I have not. 24 Q Have you ever taken any steps to try to 25 satisfy any judgment against SOHC or CDO Fund that</p>	<p>204</p> <p>1 MR. CLUBOK: We're going to mark as an 2 exhibit the document that is Bates labeled 3 HCMUBS005324, and that will be, I think, 4 Exhibit 29. 5 That must be right. Whoops, sorry, no, 6 this is the wrong document. 7 Sorry. We'll find the document here in 8 a second. I'm trying to find the letter that you 9 recently sent to the lawyers representing the 10 debtor in which you tendered your resignation. 11 I think, Alan, you may have pulled the 12 wrong number. Let's try this again. It's 13 HCMUBS005324. 14 It should be a letter. There we go. 15 Thank you. Sorry, maybe I missaw it or something 16 if you had it before. 17 Q Anyway, let's take a look at this. 18 This is a letter dated -- 19 MR. CLUBOK: And we're going to make 20 this one Exhibit 29, correct? 21 Yes. Perfect. 22 (Deposition Exhibit 29 marked for 23 identification.) 24 Q Exhibit 29 is a letter dated April 28, 25 2021 from Bonds Ellis to Mr. James Seery, care of</p>

<p>205</p> <p>1 Jeffrey Pomerantz. Do you see that?</p> <p>2 A Yes.</p> <p>3 Q And it's "RE: Resignation of James</p> <p>4 Dondero from Defendant Entities in UBS, et al.</p> <p>5 versus HCMLP, et al., Index No. 650097/2009 (N.Y.</p> <p>6 Sup. Ct.)" Correct?</p> <p>7 A Yes.</p> <p>8 Q Have you seen this letter before?</p> <p>9 A It was prepared by counsel. I have</p> <p>10 seen it.</p> <p>11 Q And it was signed by Mr. Clay Taylor,</p> <p>12 who is representing you here today, correct?</p> <p>13 A Yes.</p> <p>14 Q And you saw it after it was complete</p> <p>15 and either before or after it was sent to the --</p> <p>16 Mr. Seery?</p> <p>17 A Yes.</p> <p>18 Q And you authorized this letter to go</p> <p>19 out under your --</p> <p>20 MR. CLUBOK: Strike that.</p> <p>21 Q You authorized this letter to go out?</p> <p>22 A Yes.</p> <p>23 Q And in the letter you, in addition to</p> <p>24 Mr. Taylor, are describing a number of things. He</p> <p>25 says that you are hereby immediately resigning</p>	<p>207</p> <p>1 want to -- it was sometime 2017 or earlier, you</p> <p>2 know, essentially.</p> <p>3 Q Sorry, you believe that you were no</p> <p>4 longer a director of SOHC earlier than 2017?</p> <p>5 A You know what, it's -- I don't want to</p> <p>6 agree with that terminology. I just want to say</p> <p>7 that the entity was not functioning normally or</p> <p>8 routinely as far as corporate governance was</p> <p>9 concerned, and I was probably the last surviving</p> <p>10 director who tried to wrap it up responsibly with</p> <p>11 the 2017 policy.</p> <p>12 Q Okay. You were the only director ever</p> <p>13 in the history of SOHC; isn't that true?</p> <p>14 A I don't know. HFP had numerous</p> <p>15 directors originally --</p> <p>16 Q I didn't ask you about HFP, okay? In</p> <p>17 the interest of time here, I would like you to</p> <p>18 answer the questions that I ask. You were the</p> <p>19 sole director of SOHC from its inception, correct?</p> <p>20 A I don't know.</p> <p>21 Q When you signed in August of 2017, did</p> <p>22 you believe you were still the director of SOHC?</p> <p>23 A Yes.</p> <p>24 Q Did you check with any other -- or were</p> <p>25 you aware of any other directors in the world of</p>
<p>206</p> <p>1 from "alleged director position(s) at HFP and SOHC</p> <p>2 and/or any other officer positions at those</p> <p>3 entities."</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Now, before you sent this letter, did</p> <p>7 you believe that you were a director in SOHC?</p> <p>8 A No.</p> <p>9 Q When did you -- but you used to be a</p> <p>10 director at SOHC, correct?</p> <p>11 A Many years ago.</p> <p>12 Q Well, you certainly were a director in</p> <p>13 SOHC when you signed on their behalf in August of</p> <p>14 2017 for the insurance policy, correct?</p> <p>15 A Yes.</p> <p>16 Q So when did you stop being a director</p> <p>17 of SOHC?</p> <p>18 A I mean, prior to 2017 it had been</p> <p>19 inactive for a number of years, and, again, my</p> <p>20 view and recollection is the insurance policy was</p> <p>21 to transition and wrap up the dissolution, so to</p> <p>22 speak, responsibly.</p> <p>23 Q When did you stop being a director of</p> <p>24 SOHC, to the best of your knowledge?</p> <p>25 A For all intents and purposes -- I don't</p>	<p>208</p> <p>1 SOHC other than yourself at that time?</p> <p>2 A I don't know. I didn't check. I don't</p> <p>3 remember.</p> <p>4 Q Okay. So as far as you knew, you were</p> <p>5 the sole director of SOHC in August 2017, correct?</p> <p>6 A No. I didn't know is my testimony.</p> <p>7 Q Okay. You didn't check to see if there</p> <p>8 were other directors when you signed on behalf of</p> <p>9 SOHC; is that correct?</p> <p>10 A Correct.</p> <p>11 Q And were you still a director of SOHC</p> <p>12 in August 2017 when you signed that insurance</p> <p>13 policy?</p> <p>14 MR. TAYLOR: Objection. Asked and</p> <p>15 answered.</p> <p>16 A I believe so.</p> <p>17 Q Okay. And when -- and you resigned in</p> <p>18 this letter that you sent -- or that Mr. Taylor</p> <p>19 sent -- April 28, 2021, correct?</p> <p>20 A Yes.</p> <p>21 Q And so fair to say you were a director</p> <p>22 of SOHC for August 2017 until this resignation</p> <p>23 letter, as far as you know, correct?</p> <p>24 MR. TAYLOR: Objection. Form.</p> <p>25 A I -- maybe in formality, but I can't</p>

<p style="text-align: right;">209</p> <p>1 remember doing a single activity between 2017 and 2 today on behalf of SOHC. 3 Q Who directed SOHC's litigation strategy 4 in 2018 and 2019? 5 A I believe Scott Ellington. 6 Q Who was ultimately responsible for 7 SOHC, as far as you knew, during those years? 8 A Ultimately Scott Ellington through 9 Sentinel. 10 Q You're saying Sentinel was responsible 11 for SOHC starting in August 2017 going forward? 12 A My general understanding is that the 13 Sentinel policy took over the transition 14 responsibilities for SOHC, meaning the legal 15 strategies or any other legal issues that cropped 16 up or any tax issues. So if you're talking about 17 the period between the policy and today, I would 18 have guessed that Sentinel was handling them. 19 Q Who was able to make the decision as to 20 whether or not to settle the litigation with UBS 21 on behalf of SOHC after August of 2017, as far as 22 you knew? 23 A That would have been Scott Ellington. 24 Q Did you have any role at all in the 25 decision of whether or not SOHC would settle after</p>	<p style="text-align: right;">211</p> <p>1 connection with the UBS litigation. So even if 2 Mr. Feinstein didn't have a problem with it, this 3 has already been waived. But I assume, 4 Mr. Feinstein, you don't have a problem with this 5 line of questioning? 6 MR. FEINSTEIN: I don't, to the extent 7 that there is some question about whether SAS was 8 involved in the decision making. And, as we said, 9 our waiver extends to Sentinel- and SAS-related 10 matters. 11 MR. CLUBOK: Okay. 12 Q So Mr. Dondero, again, my question is, 13 did you ever hear about any settlement demands 14 from UBS in between August 2017 and the time you 15 filed for bankruptcy? 16 A I did not hear of any. 17 MR. CLUBOK: The next document I want 18 to put up is the responsive letter that was sent 19 in response to Exhibit 29. That's going to be 20 Bates number 5322. And that will be marked as 21 Exhibit 30. 22 (Deposition Exhibit 30 marked for 23 identification.) 24 Q Exhibit 30 is a letter sent via e-mail 25 from Jeffrey Pomerantz to your lawyer, Clay</p>
<p style="text-align: right;">210</p> <p>1 August of 2017? 2 A Until the -- I had never -- you asked 3 me this earlier today. I had never heard of other 4 UBS settlement offers until the August of '19 5 settlement. 6 Q Did you have any authority to decide 7 whether or not SOHC would settle between August of 8 2017 and that time of the bankruptcy? 9 A I don't know. Because I haven't read 10 the insurance policy, I don't know where 11 responsibilities begin and end between SOHC and 12 Sentinel. 13 Q Did you ever hear about any settlement 14 demands from UBS in between August 2017 and the 15 time that you filed for bankruptcy? 16 A So -- 17 MR. TAYLOR: To the extent that that 18 asks for him to invade the attorney-client 19 privilege, I don't believe -- but subject to 20 Highland Capital's counsel potentially saying 21 they've waived that, I'm going to instruct him not to 22 answer. I understood that to be further than what 23 they waived. 24 MR. CLUBOK: Mr. Dondero has already 25 testified about alleged settlement offers in</p>	<p style="text-align: right;">212</p> <p>1 Taylor, dated May 7, 2021. Do you see that? 2 A Uh-huh. 3 Q Is that a yes? 4 A Yes. I see that. 5 Q And it's the same Re line, the same 6 "Resignation of James Dondero from the Defendant 7 Entities" in the New York UBS litigation, correct? 8 A Yes. 9 Q Have you seen a copy of this letter 10 before today? 11 A Yes. 12 Q Okay. And without reading all of it, 13 I'm going to briefly summarize. Mr. Pomerantz 14 says he's in receipt of the letter where James 15 Dondero resigned from his positions in connection 16 with HFP and SOHC, and then he notes that you're 17 also, at least as of the time of writing this 18 letter, "a director of Highland CDO Opportunity 19 Fund, the Bermuda feeder fund for the Highland CDO 20 Opportunity Fund," also called "the CDO Fund," 21 collectively. And he asks to confirm immediately 22 whether you are "resigning from HCDOF and all 23 other subsidiaries of HCDOF as well." And I 24 believe, as far as I know, there has never been a 25 formal response to that.</p>

<p>213</p> <p>1 But my question is, as you sit here 2 today, are you a director of Highland CDO 3 Opportunity Fund? 4 MR. TAYLOR: Objection. Form. 5 A I don't know, and -- I don't know. And 6 when I got this letter, I wasn't sure of its 7 relevance relative to the insurance policy. I 8 didn't remember Bermuda entities being relevant to 9 the HFP structure. 10 Q Okay. Well, are you resigning from CDO 11 Fund if you are currently a director? 12 MR. TAYLOR: Objection as to the form 13 of the question. 14 A I don't know. I mean, we were going to 15 look into it on whether I was a director and we 16 were going to look into it if it had any relevance 17 or -- any relevance or effect on the rest of it, 18 and we hadn't decided yet. 19 Q Well, do you know that CDO Fund is one 20 of the defendants in the New York litigation? 21 A Is it one of the entities that was 22 found guilty or owing money? 23 Q Yes. 24 A Okay. I didn't know that. So we 25 need -- we needed to look into that.</p>	<p>215</p> <p>1 the -- see, I didn't see any -- do you see any 2 Ltd. -- any Bermuda funds here? I just didn't see 3 it at first glance. 4 Q I don't know. It would have to be 5 Ltd.? 6 A See, I wasn't sure that any of these 7 impacted Bermuda. 8 Q Well, in -- okay. 9 How is CDO Opportunity Master Fund 10 connected to CDO Fund that says Ltd. on it? 11 A I have no idea. 12 Q Previously you said that you didn't 13 remember signing the insurance policy, correct? 14 A Correct. 15 Q Does seeing this now refresh your 16 recollection that you did sign the insurance 17 policy on behalf of three different entities? 18 A No, not really. 19 Q But you authorized your signature on 20 this policy, correct? 21 A Correct. 22 Q And before you authorized the policy -- 23 MR. CLUBOK: Well, strike that. 24 Q So when you authorized it, you knew you 25 were authorizing it not just on behalf of SOHC or</p>
<p>214</p> <p>1 Q Okay. I take it you made no effort to 2 try to satisfy any portion of the judgment that 3 was entered against CDO Fund on behalf of UBS? 4 A I don't believe so. 5 Q And do you have any idea right now if 6 you have any responsibility for CDO Fund, either 7 as a director, an officer, owner or anything like 8 that? 9 A I don't know. 10 Q When was the last time you did -- you 11 took any actions with respect to CDO Fund? 12 A Not that I can remember at this moment. 13 None that I can remember at this moment. 14 Q When do you -- well, when do you intend 15 to decide whether or not you are going to resign 16 from being a director of CDO Fund? 17 A I don't know. Soon, I would imagine. 18 Q Okay. Well, please let us know if you 19 intend to resign from CDO Fund. 20 Let's go back to Exhibit 1. This is 21 the insurance policy. We're back on this last 22 page, and you can see here there is CDO Fund that 23 you signed on behalf of as one of the insureds. 24 Do you see that? 25 A I'm sorry, my eyes are so bad, but</p>	<p>216</p> <p>1 CDO Holding Company, but also on behalf of 2 Highland CDO Opportunity Master Fund, LP, correct? 3 A Again, I delegated and entrusted it to 4 Scott Ellington and his team. 5 Q So is that a yes? 6 A No. I didn't know. I delegated it to 7 him. I didn't -- I didn't review the signature 8 lines and the appropriateness of the signature 9 lines individually or in aggregate. I trusted him 10 to have the appropriate signature lines for what 11 he was trying to accomplish. 12 Q Going back to the first page here of 13 the insurance policy, it's called the "Legal 14 Liability Insurance Policy," correct? 15 A It appears so, yes. 16 Q And on the first page, 1.1 -- and I'm 17 going to expand it so you can read it -- it says, 18 "This policy is between the insured and the 19 insurer as declared in the schedule. The 20 document, together with its schedule and any 21 attached endorsements, is the policy which sets 22 out this insurance. It is a legal contract so 23 please read all of it carefully." 24 Do you see that? 25 A Yes.</p>

<p>217</p> <p>1 THE WITNESS: You know, guys, listen, I 2 got to jump on this call. I will make it as 3 quickly as possible, hopefully less than a half an 4 hour. Okay? 5 MR. CLUBOK: Okay. We'll be here at 6 6:30. Let's go off the record. 7 THE VIDEOGRAPHER: Off the record. 8 6:59. 9 (A recess was taken.) 10 THE VIDEOGRAPHER: On record. 7:39. 11 BY MR. CLUBOK: 12 Q Let's go back to Exhibit 1. 13 Exhibit 1 was the e-mail from Isaac 14 Leventon claiming privilege and attaching a copy 15 of this insurance policy that we have been talking 16 about, correct? 17 A Yes. 18 Q So in 1.1 it said that because it's a 19 legal contract, you should "please read all of it 20 carefully." Did you read all of this carefully, 21 ever? 22 A No. 23 Q It says the "policy is between the 24 insured and the insurer as declared in the 25 schedule." Let's go look at the schedule, which</p>	<p>219</p> <p>1 Q Do you -- is he still the appointed 2 representative for this insurance policy, as far 3 as you know? 4 A I don't -- I don't know. I don't know 5 if it's been changed. He doesn't work -- Lackey 6 Hershman doesn't exist anymore. It merged with 7 another firm. 8 Q What firm? 9 A You know what, actually, I think I 10 misspoke. I don't think they merged. I think a 11 firm called Stinson took four or five of the 12 partners into their firm. 13 Q Including Paul Lackey? 14 A Yes. 15 Q Did you fire Mr. Lackey from all the 16 representation he had of your various entities? 17 A No, I don't -- no, I don't believe so. 18 Q You had Mr. Lackey replaced as the 19 person in charge of the litigation of the UBS 20 case, correct? 21 A Yes. Yeah, so we -- yes, we use 22 them -- they ran into a lot of personal midlife 23 issues, a couple of partners, and so we started 24 replacing them on a lot of things. 25 Q In other words, you fired them from</p>
<p>218</p> <p>1 is towards the back of the document, I think right 2 before the signature page. And the schedule for 3 the insurance policy says the insurer is Sentinel 4 Reinsurance, Limited. That was your 5 understanding, correct? 6 A Yes. 7 Q And then it says the "Insured," and it 8 lists three entities, "Highland CDO Opportunity 9 Master Fund, LP," "Highland CDO Holding Company" 10 and "Highland Special Opportunities Holding 11 Company." 12 Do you see that? 13 A Yes. 14 Q Does this refresh your recollection 15 that there were three insureds specifically 16 identified in the policy? 17 A Okay, yeah. I didn't know, but yeah, 18 that seems to say it. 19 Q You're claiming that you never knew 20 before today that all three of those entities were 21 listed as the insureds? 22 A Correct. 23 Q Appointed representative is Paul 24 Lackey. Do you see that? 25 A Yes.</p>	<p>220</p> <p>1 most of the cases they were working on for you, 2 correct? 3 A From -- yes, from a bunch of them. 4 Q And you don't know if you've appointed 5 another representative to replace Mr. Lackey in 6 connection with this insurance policy? 7 A I don't know. 8 Q Do you see where it says "Date of 9 commencement of the Period of Insurance" is 10 August 1st, 2017? 11 A Yes. 12 Q And later on it lists the payment date 13 for the premium as August 31st, 2017, correct? 14 A Yes. 15 Q And that's consistent with your 16 recollection that you were approving this policy 17 in approximately August of 2017, correct? 18 A Yes. 19 Q And then do you see where it says 20 "Legal Action"? 21 A Yes. 22 Q And it specifically identifies "UBS 23 Securities LLC and UBS AG, London Branch versus 24 Highland Capital Management, LP; Highland Special 25 Opportunities Holding Company; Highland Financial</p>

<p>221</p> <p>1 Partners, LP; Highland CDO Opportunity Master 2 Fund, LP; Highland Credit Opportunities CDO, LP; 3 and Strand Advisors, Inc., Cause Number 4 650097/2009." 5 Do you see that? 6 A Yes. 7 Q That's the only legal action identified 8 in this schedule to this insurance policy, 9 correct? 10 A The only one identified on this page, 11 yes. 12 Q Well, the previous page -- I'll go to 13 the previous page so you can see it. The previous 14 page was page 16 of 16 that had a blank signature 15 page after the end of the policy terms. Do you 16 see that? 17 A Yep. 18 Q And then there is the schedule, and 19 then the next page after the schedule is the 20 signed signature page. Do you see that? 21 A Yep. 22 Q Okay. So are you aware of any other 23 schedule to this policy other than the one that 24 identifies only the UBS litigation as the legal 25 action?</p>	<p>223</p> <p>1 understood this to be a transitional policy. That 2 was the original intent and how it was described 3 to me. If it ended up taking twists and turns and 4 being more focused, I wasn't aware of. And then I 5 see it's only UBS on the schedule -- on the known 6 schedule addendum here. But I haven't seen this 7 before. I haven't looked through it. We haven't 8 gone through the other pages. Whether or not it 9 references other litigation or tax -- potential 10 tax or other litigation stuff, I don't know. So I 11 can't -- I can't say that this is the only thing 12 it represents. I don't know. 13 Q Right. But as you sit here today, you 14 have no basis to say that this policy is directed 15 at anything other than UBS other than your pure 16 speculation or wish, correct? 17 A Well, as it was described to me, but 18 also, we haven't gone over the rest of the 19 document. And just maybe this was the only action 20 that was known at the time. I -- I -- 21 Q Right. And -- 22 A If you want to ask me about the four 23 corners of this document, it says what it says, 24 and you're right, it says -- that's the only legal 25 action it says, but I can't -- I can't comment on</p>
<p>222</p> <p>1 A I'm not aware of anything else. 2 Q And it specifically says the opponent 3 is UBS Securities LLC and UBS AG, London Branch, 4 right? 5 A Yes. 6 Q It says the limit of indemnity is 7 \$100 million in the aggregate, correct? 8 A Yes. 9 Q And you had remembered it was a 10 \$100 million insurance policy, correct? 11 A Yes. 12 Q Then it says the premium is 13 \$25 million, right? 14 A Yes. 15 Q Now, fair to say this policy is 16 directed at potential liability in connection with 17 the UBS litigation that's been pending in New York 18 since 2009, correct? 19 A I'm sorry, repeat that, please. 20 Q Fair to say that this insurance policy 21 is specifically directed at potential liability 22 arising out of the UBS litigation that's been 23 pending in New York since 2009? 24 A I'm going to stay consistent with my 25 testimony that I have said all day that I</p>	<p>224</p> <p>1 the rest of the policy. 2 Q That wasn't my question, to ask you to 3 comment. We're going to go through the policy, 4 but that's not what I asked you. So please listen 5 carefully to my question. 6 As you sit here right now, you have no 7 basis to say that this policy is directed at 8 anything other than the UBS litigation other than 9 pure speculation or a wish on your part, correct? 10 MR. TAYLOR: Objection. Misstates his 11 prior testimony. 12 A Yeah, I wouldn't say a wish. That's 13 how it was described to me historically. That's 14 what I remember. 15 Q Described to you by Scott Ellington. 16 A Yes. 17 Q And you're saying that Scott Ellington 18 said that this policy would cover something beyond 19 the UBS litigation, correct? 20 A Yes, I believe that was -- yes, that's 21 what I remember, and I think that was the original 22 intent. 23 Q Yeah, but when you signed it, did 24 you -- 25 MR. CLUBOK: Strike that.</p>

<p>225</p> <p>1 Q You think it was the original intent, 2 in fact, for the policy to not even have a main 3 purpose as the UBS litigation but to have 4 something else, as you previously have stated, 5 right? 6 A Yeah, like I said, to provide 7 transition and windup for the HFP funds and 8 subsidiaries. 9 Q Yeah, but as you sit here today, other 10 than what Mr. Ellington supposedly told you, you 11 have no basis to support your statement that this 12 policy was directed at anything other than the UBS 13 litigation and potential liability related 14 thereto, correct? 15 MR. TAYLOR: Objection to the form of 16 the question. 17 A I don't have other knowledge of other 18 cases addressed by this insurance. 19 Q Okay. And we're going to go to the 20 first page again of the policy, and picking up 21 where we left off, we now know the policy is 22 between the insured and the insurer as declared in 23 the schedule, and that -- we've already covered 24 what the schedule says, correct? 25 A Yep.</p>	<p>227</p> <p>1 Do you see that? 2 A Yes. 3 Q Now, do you know enough to have a 4 general sense of what that means to you? Is that 5 gibberish to you or do you have an 6 understanding -- 7 A I mean, I think what it's -- I -- it's 8 not gibberish, but what it's really saying, I 9 think, is there's offsets for legal fees, there's 10 offsets for other expenses and other indemnities 11 or assets -- I -- yeah, you know what, I don't 12 understand. I would need -- I would need an 13 actuary or whoever decides these things to explain 14 it to me. 15 Q Okay. So then we move on. 1.32 just 16 says that there is additional -- whoops, 17 "Additional clauses set out terms, exclusions or 18 limitations that may apply to more than one 19 insured section." And it says, "The following 20 general terms apply to each insured section." And 21 it lists general exclusions and limitations, 22 duties, general terms, and general definitions. 23 Then in the next section, sorry, it 24 says the "Policy period and premium." It says, 25 "The policy will provide insurance for a period of</p>
<p>226</p> <p>1 Q So then it says words in bold have 2 specific meanings. Then it says the "Policy 3 Structure," and I'm going to make it a little bit 4 bigger here. 5 It says, "Each insured section sets out 6 the scope of the main coverage and the 7 circumstances in which the insurer's liability to 8 the insured is limited or may be excluded. 9 Further, each insured section," and that's -- 10 "insured section" is in bold, "sets out other 11 terms and conditions relevant to that insured 12 section. The cover provided by each insured 13 section is only operative if a limit of indemnity 14 is shown in the schedule. Where the limit of 15 indemnity in respect of any item in the schedule 16 is shown as 'n/a,' 'not applicable' or 'not 17 insured,' then no cover applies for that item. 18 Where the insured comprises more than one person, 19 the limit of indemnity for all claims made by all 20 persons comprising the insured shall apply, but as 21 there is no sublimit of indemnity in relation to 22 each individual person, one or more of those 23 persons will not receive payment of a claim if the 24 limit of indemnity has already been met as a 25 result of the payment of other claims."</p>	<p>228</p> <p>1 insurance provided the premium and other charges 2 are paid." And the premium is \$25 million, 3 correct? 4 A That's what it said on the schedule, 5 yes. 6 Q Okay. We're going to skip down to 7 "Insured section," where it says, "Legal 8 liability," and under "Insured section - Legal 9 liability," it says, "The insurer agrees to 10 indemnify the insured in respect of any legal 11 liability occurring during the period of insurance 12 up to and including but not exceeding the limit of 13 indemnity provided that either the Court (or any 14 appellate court to which the Court's judgment in 15 the legal action is appealed) makes an order of 16 liability relating to the legal action against the 17 insured; or the legal action is (with the prior 18 written agreement of the insured, the appointed 19 representative and the insurer) settled on terms 20 that provide for payment by the insured to the 21 opponent." 22 Do you see that? 23 A Yes. 24 Q And when it talks about the legal 25 action, that's a -- "legal action" is a bold</p>

<p>229</p> <p>1 phrase, correct?</p> <p>2 A Yes.</p> <p>3 Q And on the schedule that we looked at</p> <p>4 before, which I'm going to skip back to, the legal</p> <p>5 action lists the UBS legal action and nothing</p> <p>6 else, correct?</p> <p>7 A Yes.</p> <p>8 Q So, do you know if a claim has ever</p> <p>9 been made under this policy?</p> <p>10 A I have no idea.</p> <p>11 Q Do you know if there has been any</p> <p>12 payments authorized under this policy?</p> <p>13 A I have no idea.</p> <p>14 Q You say you have no idea. Isn't it</p> <p>15 true you have authorized payments under this</p> <p>16 policy before?</p> <p>17 A I'm willing to be refreshed. Do you</p> <p>18 mean payment of legal fees or -- I'm willing to be</p> <p>19 refreshed.</p> <p>20 Q Yeah, have you authorized payment of</p> <p>21 legal fees pursuant to this policy?</p> <p>22 A I don't remember. I mean, it sounds</p> <p>23 logical, but I don't remember.</p> <p>24 Q And you have no idea if a claim has</p> <p>25 ever been made under this policy?</p>	<p>231</p> <p>1 make sure it's a bona fide claim.</p> <p>2 Q When you authorized this policy, did</p> <p>3 you expect that it could be difficult to collect</p> <p>4 under the terms of the policy, given what you have</p> <p>5 said about insurance companies?</p> <p>6 A I don't remember having any thoughts on</p> <p>7 that subject.</p> <p>8 Q How much total legal fees have been</p> <p>9 paid out pursuant to this policy?</p> <p>10 A I have no idea.</p> <p>11 MR. CLUBOK: We're going to turn to</p> <p>12 what's been -- what's behind Tab number 3, and I</p> <p>13 believe it is Exhibit number --</p> <p>14 REMOTE TECH: That would be 31.</p> <p>15 MR. CLUBOK: 31. Thank you.</p> <p>16 (Deposition Exhibit 31 marked for</p> <p>17 identification.)</p> <p>18 Q We are going to turn to Exhibit 31,</p> <p>19 which is a letter from McKool Smith dated</p> <p>20 October 19th, 2018, from Gary Cruciani to Jim</p> <p>21 Dondero.</p> <p>22 Now, do you -- you recall the UBS trial</p> <p>23 occurred in late summer of 20- -- or in the summer</p> <p>24 of 2018, correct?</p> <p>25 A Okay.</p>
<p>230</p> <p>1 A I have no idea.</p> <p>2 Q You know that this policy on its face</p> <p>3 applies to legal liability in connection with the</p> <p>4 UBS litigation in New York, correct?</p> <p>5 A Generally, I guess, or maybe that's</p> <p>6 what you mean by "on its face." But whether and</p> <p>7 how a claim is paid or whether it's bona fide, you</p> <p>8 know, there's a whole cottage industry that</p> <p>9 develops up around that. We --</p> <p>10 Q Have you made any -- oh, sorry. You</p> <p>11 can continue.</p> <p>12 A No, I was just going to say we've tried</p> <p>13 to collect on insurance before too and it's not</p> <p>14 easy.</p> <p>15 Q Insurance companies don't make it easy</p> <p>16 sometimes, correct?</p> <p>17 A That's right.</p> <p>18 Q And is that Sentinel Re's policy, to</p> <p>19 not make it easy for someone to collect on a</p> <p>20 premium -- on a policy?</p> <p>21 MR. TAYLOR: Objection to the form of</p> <p>22 the question.</p> <p>23 A No, I'm not making a comment. I'm just</p> <p>24 saying, especially on a large policy, the</p> <p>25 insurance company, I think, is always going to</p>	<p>232</p> <p>1 Q Did you pay attention to the trial when</p> <p>2 it was going on?</p> <p>3 A No.</p> <p>4 Q Did you ever get a report of how the</p> <p>5 trial went after it was concluded?</p> <p>6 A Not that I remember.</p> <p>7 Q But you got a report when the decision</p> <p>8 was handed down by the judge awarding over a</p> <p>9 billion dollars, including interest, correct?</p> <p>10 A You mean the more recent case? Is that</p> <p>11 what you're -- the 2020 case?</p> <p>12 Q It was in the end of 2019, I believe.</p> <p>13 In November of 2019 there was a decision issued in</p> <p>14 that case, right after you had gone into</p> <p>15 bankruptcy, a few weeks later, in which a decision</p> <p>16 was handed down awarding over a billion dollars,</p> <p>17 including interest.</p> <p>18 Do you remember that?</p> <p>19 A Yes.</p> <p>20 Q And before that decision was handed</p> <p>21 down but after the case was tried, so when people</p> <p>22 didn't know what the result was, Mr. Cruciani</p> <p>23 wrote to you and asked you to pay the legal fees</p> <p>24 that had been incurred from trying the case. Do</p> <p>25 you remember that?</p>

<p>233</p> <p>1 A I do not remember, but refresh me. I'm 2 okay. 3 Q Okay. So I'm showing you Exhibit 31, 4 and it lists a number of different actions. It 5 says, "Re: Redeemer Committee versus Highland 6 Capital, the Delaware Action." 7 A Yeah. 8 Q Then "Redeemer Committee versus 9 Highland Capital, the Crusader Arbitration." Then 10 it lists the UBS case, which they call "the UBS 11 Case," in New York. Then they list the case of 12 Highland versus Acis, which they call "the 13 Terry/162 case" -- or "Terry/162nd Case." And 14 then they list the case against Alvarez and 15 Marsal, which they call "the A&M Case." 16 Do you see that? 17 A Yes. 18 Q The letter that's been marked as 19 Exhibit 31 from Gary Cruciani of McKool Smith 20 references five separate actions. 21 Do you see that? 22 A Yes. 23 Q And Mr. Cruciani says to you, 24 "Mr. Dondero, With regard to the fees and expenses 25 that McKool Smith has incurred in the</p>	<p>235</p> <p>1 Q Do you remember negotiating this 2 payment schedule with Mr. Cruciani? 3 A Not specifically. 4 Q Mr. Cruciani was a lawyer that you 5 hired to help you in these five cases that he 6 identifies in the Re line in Exhibit 31, right? 7 A Yes. 8 Q And did you think Mr. Cruciani did a 9 good job for you? 10 A It depends matter by matter. I think 11 they know they were weak on the Acis matter, but 12 that might have been Jernigan related. 13 Q How about the UBS case? 14 A I don't have an opinion. I don't 15 remember. 16 Q Okay. But you -- when Mr. Cruciani 17 sent you this letter, the schedule had already 18 been agreed upon and he is just sending this to 19 confirm it, correct? 20 A That's right. It would have been 21 negotiated by Ellington and the legal team. I 22 didn't -- I just signed it. 23 Q But you signed off on this schedule 24 that would pay him approximately \$6 million 25 between October 31st, 2018 and December 31st, 2018</p>
<p>234</p> <p>1 above-referenced cases, and has billed to Highland 2 Capital Management, LP and its affiliates 3 (collectively, 'Highland'), Highland agrees to pay 4 amounts according to the following schedule 5 towards the balances owed by Highland. The 6 Payment Schedule will apply toward the invoiced 7 balances but shall not be in satisfaction of the 8 entire amounts. Payments made pursuant to the 9 Payment Schedule will be without waiver or 10 prejudice to the entitlement to payment on 11 remaining unpaid balances" and Highland's right to 12 contest it, et cetera. 13 And then there is a payment schedule 14 which says that Highland will pay McKool Smith 15 \$2 million by October 31st, 2018, another 16 \$2 million by November 30th, 2018, and a third 17 \$2 million by December 31st, 2018. 18 Do you see that? 19 A Yes. 20 Q And a little bit farther down it says, 21 "Agreed on behalf of Highland Capital Management, 22 LP by Strand Advisors, its general partner," and 23 it's signed by you. 24 Do you see that? 25 A Yes.</p>	<p>236</p> <p>1 for those five cases that he notes at the top of 2 Exhibit 31, correct? 3 A Yes. 4 Q And then you -- there's a note. It 5 looks like it might have been a Post-it Note that 6 got copied that says "50/50 Sentinel." Do you see 7 that? 8 A Yes. 9 Q Is that your handwriting? 10 A No. 11 Q Do you know whose it is? 12 A No. 13 Q Did you ever direct Sentinel to take 14 responsibility for some of this payment schedule 15 that you agreed to in Exhibit 31 with 16 Mr. Cruciani? 17 A No. I wouldn't have been the one that 18 decided legal fee allocations. 19 Q Now, how much of that \$6 million was as 20 a result of the UBS case as opposed to all the 21 other cases? Any idea? 22 A No idea. 23 Q Any idea, rough percentage? Is it half 24 the amount? Is it two thirds of the amount? Is 25 it --</p>

<p>237</p> <p>1 A No idea.</p> <p>2 Q -- 10 percent?</p> <p>3 A No idea.</p> <p>4 Q Any clue?</p> <p>5 A No idea.</p> <p>6 Q Did you ever make any effort to find</p> <p>7 out?</p> <p>8 A No. It's not -- it wasn't my job to</p> <p>9 allocate legal fees between, you know, items.</p> <p>10 Q Do you know if Sentinel ever paid for</p> <p>11 part of the legal fees that McKool Smith agreed to</p> <p>12 under this payment schedule in Exhibit 31?</p> <p>13 A If it was allocated, it would have</p> <p>14 paid. I know McKool -- I know we did pay McKool</p> <p>15 according to that schedule.</p> <p>16 Q What do you mean, "if it was</p> <p>17 allocated"? What does that mean?</p> <p>18 A Well, I'm just saying whoever did the</p> <p>19 accounting in legal or accounting, if they said</p> <p>20 X percent was going to be paid by one entity and</p> <p>21 Y percent was going to get paid by another and</p> <p>22 Z percent was going to get paid by another, they</p> <p>23 would have kept to that schedule. And I know</p> <p>24 McKool Smith was paid the monies outlined here.</p> <p>25 Q And who would have had the respons- --</p>	<p>239</p> <p>1 covered by the insurance policy that we have been</p> <p>2 talking about today is the UBS case, correct?</p> <p>3 A Yes.</p> <p>4 Q Do you know if Isaac Leventon had</p> <p>5 authority to authorize payments from Sentinel Re</p> <p>6 to pay for legal fees or costs associated with the</p> <p>7 UBS litigation?</p> <p>8 A I don't know.</p> <p>9 Q Would Scott Ellington know? Or would</p> <p>10 you expect Scott Ellington to know, I should say?</p> <p>11 A Yes.</p> <p>12 Q Would J.P. Sevilla have anything to do</p> <p>13 with arranging for Sentinel Re to pay legal fees</p> <p>14 or expenses associated with the UBS litigation, as</p> <p>15 far as you know?</p> <p>16 A I don't know.</p> <p>17 Q Would you expect Scott Ellington to be</p> <p>18 aware of whether or not Isaac Leventon and J.P.</p> <p>19 Sevilla had that authority?</p> <p>20 A Yes, I believe Scott would know.</p> <p>21 Q Do you know your legal team stayed at</p> <p>22 the Four Seasons for the UBS litigation?</p> <p>23 A No, I did not know that.</p> <p>24 Q Did they deserve to stay at the Four</p> <p>25 Seasons?</p>
<p>238</p> <p>1 who would have had the authority to tell Sentinel</p> <p>2 they've got to pay a certain allocation of these</p> <p>3 fees?</p> <p>4 A Whoever was doing legal fee expense</p> <p>5 allocations at the time.</p> <p>6 Q Who was that?</p> <p>7 A It would have been somebody in -- it</p> <p>8 would have either been Ellington or somebody on</p> <p>9 his team.</p> <p>10 Q The policy, though -- of these five</p> <p>11 actions that are identified here, the only one</p> <p>12 that's covered by the policy is the UBS case,</p> <p>13 correct?</p> <p>14 MR. TAYLOR: Objection to the form of</p> <p>15 the question.</p> <p>16 A Okay. Yeah, I -- yes, I can see UBS</p> <p>17 only referenced in the third of the five.</p> <p>18 Q My question is, is it the case that --</p> <p>19 MR. CLUBOK: Strike that.</p> <p>20 Q There are five matters listed here on</p> <p>21 Exhibit 31 that Mr. Cruciani is asking for legal</p> <p>22 fees and you're agreeing to pay a total of</p> <p>23 \$6 million to, correct?</p> <p>24 A Right.</p> <p>25 Q And of those five, the only one that is</p>	<p>240</p> <p>1 A You know, not based on results to date.</p> <p>2 Q Okay. Let's look at the document</p> <p>3 behind Exhibit -- I'm sorry, behind Tab 12, which</p> <p>4 has previously been marked as Exhibit 2.</p> <p>5 MR. TAYLOR: While we're waiting for</p> <p>6 that to pull up, can I get a time check, please?</p> <p>7 And I'm going to have, like, five minutes of</p> <p>8 questions at the end.</p> <p>9 THE VIDEOGRAPHER: Yes, sir. We're at</p> <p>10 5 hours and 9 minutes.</p> <p>11 MR. TAYLOR: Thank you.</p> <p>12 MR. CLUBOK: Plenty of time.</p> <p>13 THE WITNESS: You heard me?</p> <p>14 MR. CLUBOK: For what it's worth, I</p> <p>15 don't think I'll use all that time, Jim, but we'll</p> <p>16 keep plugging away. We're making good headway</p> <p>17 now. Although I reserve the right to respond and</p> <p>18 ask more questions after I hear what Clay has to</p> <p>19 say. So I'll save a little bit of time for that.</p> <p>20 Q This is -- I'm looking at what's been</p> <p>21 marked as Exhibit 2. And I'm going to show you</p> <p>22 first the signature page. And do you see where it</p> <p>23 says "Seller, Highland CDO Opportunity Master</p> <p>24 Fund, by," several entities and ultimately signed</p> <p>25 by you as president of Strand Advisors?</p>

<p>241</p> <p>1 A Yep.</p> <p>2 Q Is that your signature?</p> <p>3 A Yep.</p> <p>4 Q And did you have authority to sign on</p> <p>5 behalf of those entities that are listed there</p> <p>6 under "Seller"?</p> <p>7 A I believe so.</p> <p>8 Q And same thing with -- is that also</p> <p>9 your signature for Highland CDO Opportunity Fund,</p> <p>10 Limited and Highland CDO Holding Company on this</p> <p>11 same document?</p> <p>12 A Yes.</p> <p>13 Q And you had authority to sign on behalf</p> <p>14 of those entities as well?</p> <p>15 A I believe so.</p> <p>16 Q And then it's also got Highland Special</p> <p>17 Opportunities Holding Company. Same thing? You</p> <p>18 had authority to sign on behalf of that entity at</p> <p>19 the time?</p> <p>20 A I believe so.</p> <p>21 Q And then it continues with some other</p> <p>22 entities on this document, including Highland</p> <p>23 Financial Corp. Do you see that?</p> <p>24 A Yep.</p> <p>25 Q Did you have authority to sign on</p>	<p>243</p> <p>1 Reinsurance and each of Highland CDO Opportunity</p> <p>2 Master Fund, LP; Highland CDO Holding Company and</p> <p>3 Highland Special Opportunities Holding Company</p> <p>4 (together, 'Sellers')."</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Now, that's what it says up there. And</p> <p>8 then it says that "Sellers are each a party in a</p> <p>9 lawsuit styled UBS Securities LLC and UBS AG,</p> <p>10 London Branch versus Highland Capital Management,"</p> <p>11 et cetera. And that's defined as the "Lawsuit."</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q And it says, "Whereas, Sellers desire</p> <p>15 to purchase a Legal Liability Insurance Policy</p> <p>16 relating to Sellers' potential liability in the</p> <p>17 Lawsuit" -- capital L, Lawsuit -- "in form</p> <p>18 substantially as set forth in Exhibit A hereto</p> <p>19 (the 'Policy')."</p> <p>20 Do you see that?</p> <p>21 A Yep.</p> <p>22 Q Now, does that mention anything about</p> <p>23 any other litigation?</p> <p>24 A No.</p> <p>25 Q Does it mention anything about</p>
<p>242</p> <p>1 behalf of Highland Financial Corp. at this time?</p> <p>2 A I believe so.</p> <p>3 Q And same thing with Highland Financial</p> <p>4 Partnership, or HFP?</p> <p>5 A I believe so.</p> <p>6 Q So you signed on behalf of all these</p> <p>7 different entities as the seller for this purchase</p> <p>8 agreement. Do you see that?</p> <p>9 A Yes.</p> <p>10 Q And then the purchaser was an entity --</p> <p>11 was Sentinel Reinsurance. Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And it was signed by Andrew Dean,</p> <p>14 right?</p> <p>15 A Yes.</p> <p>16 Q Did you ever talk to Andrew Dean about</p> <p>17 this agreement?</p> <p>18 A No.</p> <p>19 Q Have you ever met Andrew Dean?</p> <p>20 A I don't believe so.</p> <p>21 Q Have you ever spoken with Andrew Dean?</p> <p>22 A Not that I can recall.</p> <p>23 Q Going back to the beginning, this</p> <p>24 purchase agreement was dated August 7th, 2017, and</p> <p>25 it was "entered into by and among Sentinel</p>	<p>244</p> <p>1 transition services of any kind?</p> <p>2 A No.</p> <p>3 Q Does it mention anything about dealing</p> <p>4 with regulators or dealing with the IRS or dealing</p> <p>5 with taxes or anything else like that?</p> <p>6 A No.</p> <p>7 Q The only reason given for purchasing</p> <p>8 the legal liability insurance policy is related to</p> <p>9 the Highland affiliated entities' potential</p> <p>10 liability in the UBS lawsuit, correct?</p> <p>11 A Yes.</p> <p>12 Q And the purchaser under this agreement</p> <p>13 is an insurance company that is able to provide</p> <p>14 the sellers insurance coverage pursuant to the</p> <p>15 terms of the requested policy. Do you see that?</p> <p>16 A Yes.</p> <p>17 Q And the policy you understand is the</p> <p>18 one we have been talking about today, correct?</p> <p>19 A Yes.</p> <p>20 Q And then it talks about a payment of</p> <p>21 premium, and it says the "Purchaser," which is</p> <p>22 Sentinel Reinsurance, "agrees to accept the assets</p> <p>23 listed in Schedule A as 100 percent payment of the</p> <p>24 Premium" -- capital P -- "including any as yet</p> <p>25 unpaid or contingent financial proceeds or other</p>

<p>245</p> <p>1 benefits related thereto."</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q And, remember, the premium was supposed</p> <p>5 to be \$25 million, correct?</p> <p>6 A Yes.</p> <p>7 Q Then it says this is the entire</p> <p>8 agreement. It says you can only amend it in</p> <p>9 writing. It says you can execute in counterparts.</p> <p>10 It says the governing law is the Cayman Islands.</p> <p>11 And then it says, "Further Assurances," the</p> <p>12 parties agree to do the other things necessary to</p> <p>13 execute this agreement. Do you see that?</p> <p>14 A Yes.</p> <p>15 Q And before you signed on behalf of all</p> <p>16 these entities, did you make any effort to figure</p> <p>17 out what you were signing?</p> <p>18 A No, not beyond that. It was all tied</p> <p>19 together, I guess.</p> <p>20 Q All tied together with the insurance</p> <p>21 policy issuance, correct?</p> <p>22 A Yes.</p> <p>23 Q And it referenced a schedule of what</p> <p>24 was being purchased, and I'm going to scroll down</p> <p>25 in the document to the page that's entitled</p>	<p>247</p> <p>1 MR. CLUBOK: Or strike that.</p> <p>2 Q The Aberdeen asset. Do you recognize</p> <p>3 that asset?</p> <p>4 A I just -- I recognize the name. It's</p> <p>5 an old CLO.</p> <p>6 Q Do you know what the fair market value</p> <p>7 was at the time it was transferred as part of</p> <p>8 the --</p> <p>9 A No.</p> <p>10 Q -- sales option, the \$25 million</p> <p>11 premium for the insurance policy?</p> <p>12 A No.</p> <p>13 Q Did you make any effort to figure out</p> <p>14 the fair market value of the Aberdeen asset at the</p> <p>15 time it was transferred?</p> <p>16 A No.</p> <p>17 Q How about the Southfork CLO? Same</p> <p>18 answer?</p> <p>19 A Yes.</p> <p>20 Q Same answer for the -- well, there's</p> <p>21 another Aberdeen asset. It looks like it's the</p> <p>22 same one, although it's a different ISIN number.</p> <p>23 What does the ISIN number mean? Is that like a</p> <p>24 CUSIP number?</p> <p>25 A Yeah, it's an identification number for</p>
<p>246</p> <p>1 "Schedule A" of Exhibit 2, and this is -- it will</p> <p>2 be probably a little bit hard to read. I'm going</p> <p>3 to scroll down part of the time so we can keep it</p> <p>4 large enough for you to read it on the screen.</p> <p>5 But I can change the size if you want to see the</p> <p>6 whole thing. I'll change the size briefly so you</p> <p>7 can see the whole page and then I'll make it</p> <p>8 smaller so you can -- or make it bigger so you can</p> <p>9 read it more carefully on the screen.</p> <p>10 So Schedule A has two pages, and it</p> <p>11 lists a series of assets. Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And these were the assets that this</p> <p>14 purchase agreement specifically said are being</p> <p>15 transferred from the various Highland affiliates</p> <p>16 as satisfaction of the \$25 million premium for the</p> <p>17 insurance policy, correct?</p> <p>18 A Yes. Yes.</p> <p>19 Q Let me ask you about some of these</p> <p>20 assets. Do you know what "Aberdeen LN FDG LTD</p> <p>21 PFD" is?</p> <p>22 A Yeah, some of these are old CLO pieces.</p> <p>23 Q Okay. Do you know specifically -- I</p> <p>24 asked you about the first one, the Aberdeen</p> <p>25 entity --</p>	<p>248</p> <p>1 things that aren't CUSIP eligible, I think.</p> <p>2 Q If there's different ISINs for the two</p> <p>3 different Aberdeens, does that mean they're</p> <p>4 different tranches or something? Or why would</p> <p>5 there be different ISINs for the two different</p> <p>6 Aberdeen assets?</p> <p>7 A That's what I would guess, but I don't</p> <p>8 know.</p> <p>9 Q Okay. Do you -- so I'm going to go</p> <p>10 from the assets from Aberdeen down to Greenbriar.</p> <p>11 So the first six assets listed here, fair to say</p> <p>12 you have no idea what their fair market values</p> <p>13 were at the time of the transfer?</p> <p>14 A Correct.</p> <p>15 Q And you made no effort to find that</p> <p>16 out, correct?</p> <p>17 A Correct.</p> <p>18 Q And then there's two line entries for</p> <p>19 Highland Financial Partners LP and Highland</p> <p>20 Financial Partners LP NPV. Do you know what that</p> <p>21 refers to?</p> <p>22 A No.</p> <p>23 Q Would those be interests in Highland</p> <p>24 Financial Partners?</p> <p>25 A I don't know.</p>

<p>249</p> <p>1 Q Okay. Do you have any idea what the 2 fair market value of those interests were at that 3 time? 4 A No. 5 Q How about Longstreet CDO or NexPoint 6 C COM? Any idea of the fair market value of those 7 assets? 8 A Nope. 9 Q Pam Cap FDG LP? Does that ring a bell? 10 A That was one of our -- that was in '98. 11 That was one of our first large CLOs. I think 12 that was 1998. 13 Q Any idea what it was worth at the time 14 of this transfer? 15 A Cents. Cents on the dollar. 16 Q How about -- what's FRN? 17 A I don't know. Floating rate note, I'm 18 guessing. I don't know. 19 Q What's a floating rate note? 20 A Sometimes CLO tranches are referred to 21 as floating rate notes. 22 Q Okay. Any idea what the fair market 23 value of that floating rate note would have been 24 at the time of this transfer? 25 A I don't know which tranche it is. It </p>	<p>251</p> <p>1 an entity that's now called Multi Strat, correct? 2 A I don't know. 3 Q Do you know if Highland Credit 4 Opportunities changed its name at some point to 5 Multi Strat? 6 A I don't know. I've heard that 7 recently, but I don't know that to be true. 8 Q Well, do you know if Highland Credit 9 Opportunities ever changed its name? 10 A I don't know. I mean, I'm willing to 11 be educated, but I don't know. 12 Q You've heard of the entity that I've 13 shorthand called Multi Strat, right? 14 A Yes. 15 Q Was Multi Strat always called Multi 16 Strat? 17 A I -- we tried to clean up a lot of 18 funds that were small, and, you know, we tried to 19 aggregate assets and strategies after the '08 20 crisis, but I don't remember all of the name 21 changes. 22 Q Okay. By the way, I should have 23 mentioned that all the assets I'm talking about 24 now on Schedule A of Exhibit 2 are under a big 25 bold, heading, "Highland CDO Opportunity Master </p>
<p>250</p> <p>1 says -- is that 0 point -- I don't know. I think 2 it is the equity tranche, but I don't -- I don't 3 know. 4 Q How come there is no ISIN next to FRN? 5 A I don't know. 6 Q Any idea how the value of that asset 7 would compare with the par value? 8 A I have no idea. 9 Q Touse Inc.? Any idea about that one? 10 A No. 11 Q Valhalla or Vertical? Any idea about 12 those assets, what they were or how much they were 13 worth at the time of the transfer? 14 A No idea. Those are CLOs, but I 15 don't -- I mean, I don't know what Vertical is. 16 That wasn't one of our deals. Valhalla was one of 17 our old deals. 18 Q Was it -- did it lose value before it 19 closed? 20 A I have no idea. 21 Q Then we get to Highland Credit 22 Opportunities CDO Limited Partnership Interest. 23 Do you see that? 24 A Yes. 25 Q Now, Highland Credit Opportunities is </p>	<p>252</p> <p>1 Fund, LP." Do you see that? 2 A Yes. 3 Q And there's other entities that have 4 assets, but we'll get to those in a minute. I'm 5 just going to continue through the CDO -- Highland 6 CDO Opportunity Master Fund, LP assets. 7 And did you know that Highland CDO 8 Opportunity Master Fund at one point had an 9 interest in Highland Credit Opportunities? 10 A I don't know. 11 Q Look, you -- you've offered settlements 12 in this case that relate to interest in Multi 13 Strat, correct? 14 A Yeah, but that wasn't because of this. 15 Q I understand, but just to get the names 16 straight, you know that Multi Strat was once the 17 entity that -- without getting all the acronyms at 18 the end exactly right -- was loosely called 19 Highland Credit Opportunities or Highland Credit 20 Opps, right? 21 A See, that's what I don't know. I mean, 22 we have offered settlements out of Multi Strat 23 before, but it's because of the life settlements, 24 not because of this. 25 Q No, no, but I'm saying -- I'm just </p>

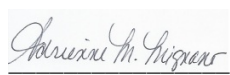
<p>253</p> <p>1 talking about the name. You know -- you have 2 recently -- you recently caused people at Highland 3 to get you the redeemers from Multi Strat, and 4 fair to say that when you did that, you knew that 5 what is now called Multi Strat used to be called 6 an entity that was known as Highland Credit 7 Opportunities; isn't that true? 8 A I don't remember. 9 MR. TAYLOR: Andy, that's been asked 10 and answered, like, five times now, in a row. 11 Q So continuing on the Schedule A, the 12 Highland CDO Opportunity Master Fund assets that 13 were transferred to Sentinel Reinsurance for 14 satisfaction, in part, of the \$25 million premium, 15 do you see there is an entry for "NexPoint Real 16 Estate Strat -Z"? 17 A Yes. 18 Q Do you know what that's worth? 19 A Nope. No, I do not. 20 Q Then there's a Highland Gemini Program 21 \$2.4 million promissory note from the Dugaboy 22 trust as maker and cash of 599,000. 23 Do you see that? 24 A Yes. 25 Q Now, you know what the cash was worth.</p>	<p>255</p> <p>1 100 percent payment of the Premium," which was 2 \$25 million, correct? 3 A Yes. 4 Q Okay. So going back to Schedule A, all 5 of these assets together on Schedule A were to 6 satisfy the \$25 million premium for the insurance 7 policy we have been talking about today, right? 8 A Yes. 9 Q And part of that was \$599,000 in cash 10 from Highland CDO Opportunity Master Fund, right? 11 A Yes. 12 Q And that \$599,000 in cash would have 13 been a liquid asset that was being transferred as 14 partial payment of the premium, correct? 15 A Yes. 16 Q And how about that \$2.4 million 17 promissory note from Dugaboy Investment Trust? 18 Did Dugaboy pay that note, satisfy that note? 19 A Yes. 20 Q So -- and Dugaboy -- do you know if 21 Dugaboy is not going to make good on that note? 22 A I don't know. 23 Q Has Dugaboy made good on that note? 24 A I don't know. 25 Q Do you have any basis to believe that</p>
<p>254</p> <p>1 The cash was worth \$599,999, correct? 2 A Yes. 3 Q So that's not -- that would be a very 4 liquid asset that was held at CDO Opportunity 5 Master Fund prior to the transfer to pay for the 6 premium, correct? 7 A I don't know. 8 Q You don't know if cash is liquid? 9 A No, I know cash is liquid. I don't 10 know if that was used to pay the premium. I don't 11 know. 12 Q Oh. Well, this is -- what we're 13 looking at here on Exhibit 2 is the purchase 14 agreement, and it says that the "Purchaser agrees 15 to accept the assets listed in Schedule A hereto 16 as 100 percent payment of the premium." It is the 17 document you signed on behalf of all of these 18 different entities. 19 Do you see that under "I. Payment of 20 Premium" in this purchase agreement which has been 21 marked as Exhibit 2? 22 A Yes, I see that. 23 Q Okay. And it says that "Purchaser" -- 24 that's Sentinel Reinsurance -- "agrees to accept 25 the assets listed in Schedule A hereto as</p>	<p>256</p> <p>1 they have some excuse for not making good on that 2 note, as you sit here today? 3 A I do not. 4 Q So you would expect that 2.4 million to 5 be worth \$2.4 million? 6 A I don't know. I don't know the terms 7 of it. I don't know the -- I don't know the 8 terms, the tenor. I don't know -- I don't know. 9 Q Okay. What's Cambridge 5 times 10 FLOATING? 11 A I do not know. 12 Q No idea what that asset refers to? 13 A It's not one of our old CLOs. I don't 14 know what it is. 15 Q Okay. And then you see there's "Cash," 16 and there's another 7.8 -- nearly \$7.8 million in 17 cash in addition to the 600,000 previously 18 discussed, right? 19 A Yep. Sure. 20 Q So that's a total of about \$8.4 million 21 in cash from CDO Opportunity Master Fund as 22 partial payment of the \$25 million premium, right? 23 A Yes. 24 Q And that 8.4 million is completely 25 liquid, right?</p>

<p>257</p> <p>1 A Yes.</p> <p>2 Q So when Highland CDO Opportunity Master</p> <p>3 Fund had \$8.4 million in cash and it gave it to</p> <p>4 Sentinel for about a third of the premium, was</p> <p>5 that making that 8.4 million more liquid or less</p> <p>6 liquid?</p> <p>7 A I--</p> <p>8 Q Was CDO Opportunity Master Fund more or</p> <p>9 less liquid after this transfer of all of its</p> <p>10 assets plus \$8.5 million in cash?</p> <p>11 MR. TAYLOR: Objection to the form.</p> <p>12 A I-- I--</p> <p>13 Q Yeah, sorry. To be clear, it's</p> <p>14 approximately \$8.4 million in cash. Was CDO</p> <p>15 Opportunity Master Fund more or less liquid after</p> <p>16 transferring all of these assets listed on</p> <p>17 Schedule A, including the roughly \$8.4 million in</p> <p>18 cash?</p> <p>19 A I don't -- I don't know. I don't know</p> <p>20 what the payables -- I don't know what the legal</p> <p>21 fees were that were accrued. I don't -- you don't</p> <p>22 know enough of what else is happening at the CDO</p> <p>23 Master Fund or the rest of HFP. I mean, it could</p> <p>24 have \$10 million of legal expenses. I just don't</p> <p>25 know.</p>	<p>259</p> <p>1 for the premium, correct?</p> <p>2 A No, I -- Andy, I can't say that, and I</p> <p>3 won't say that because we don't know what</p> <p>4 outstanding bills might have been due. I mean, I</p> <p>5 doubt they were 30 million of legal expenses, but</p> <p>6 if we don't know what they are -- let's say they</p> <p>7 were 30 million of legal expenses. Then there is</p> <p>8 no cash going over, right?</p> <p>9 Q Okay. You have no idea, as you sit</p> <p>10 here today, if it would -- that 30 million is a</p> <p>11 number you just made up out of thin air; isn't</p> <p>12 that true?</p> <p>13 A Well, yeah, but you made up that</p> <p>14 there's zero legal expenses.</p> <p>15 Q No, I haven't said that yet. And I'm</p> <p>16 not going to get into an argument with you, but</p> <p>17 that 30 million hypothetical legal fees is a</p> <p>18 number you made out of totally thin air, correct?</p> <p>19 A Correct.</p> <p>20 Q What, roughly, were the legal fees then</p> <p>21 owed by CDO Fund in August of 2017?</p> <p>22 A I have no idea so I don't want to</p> <p>23 speculate.</p> <p>24 Q You previously said that the litigation</p> <p>25 had been dormant for a while in August of 2017;</p>
<p>258</p> <p>1 Q As you sit here today, are you aware of</p> <p>2 any such legal expenses that CDO Fund transferred</p> <p>3 to Sentinel Re?</p> <p>4 A No, I don't. But to the extent that we</p> <p>5 don't, we don't know whether the cash is spoken</p> <p>6 for or not.</p> <p>7 Q Okay. By the way, the Highland CDO</p> <p>8 Opportunity Fund has another 2.3 million in cash.</p> <p>9 Do you see that?</p> <p>10 A Yes.</p> <p>11 Q So now the total cash that's being</p> <p>12 transferred to Sentinel Re is over 10 and a half</p> <p>13 million dollars, right?</p> <p>14 A Yes.</p> <p>15 Q So that's higher than the threshold</p> <p>16 above which you said it would be material as part</p> <p>17 of this transaction, correct?</p> <p>18 A I -- obviously, this transaction</p> <p>19 changed a lot. This transaction does not, you</p> <p>20 know, correspond with my recollection.</p> <p>21 Q Right. But you would agree that the</p> <p>22 fact that there is at least 10 and a half million</p> <p>23 dollars in cash being transferred as partial</p> <p>24 payment of a \$25 million premium reflects the fact</p> <p>25 that cash was a very material part of the payment</p>	<p>260</p> <p>1 isn't that right?</p> <p>2 A But you -- you helped refresh me that</p> <p>3 it wasn't dormant and there was some significant</p> <p>4 legal expenses due to McKool and other people,</p> <p>5 right, so I -- I don't know if it was -- I thought</p> <p>6 it had been dormant for a number of years. I was</p> <p>7 wrong. Like I said, I didn't refresh myself on</p> <p>8 this case before the depo so ...</p> <p>9 Q You're not aware of any legal fees that</p> <p>10 were owed as of the time of this insurance policy,</p> <p>11 as you sit here today; is that true?</p> <p>12 A I have no awareness, correct, of</p> <p>13 whether there were zero or 30 million or</p> <p>14 10 million or 5 million.</p> <p>15 Q Well, you have no basis -- you know</p> <p>16 they weren't 30 million, right?</p> <p>17 A I think you -- you charged UBS</p> <p>18 45 million. I mean, they could have been. Right?</p> <p>19 I mean, the last time we saw -- the last time we</p> <p>20 saw Latham's bills to UBS, it was 42 or</p> <p>21 44 million, right?</p> <p>22 Q You know, as you sit here today, that</p> <p>23 you never paid your lawyers anything like</p> <p>24 \$30 million for the UBS litigation; isn't that</p> <p>25 true?</p>

<p>261</p> <p>1 A I don't know.</p> <p>2 Q Well, do you think in good faith, under</p> <p>3 oath, that you paid your lawyers something like</p> <p>4 \$30 million for the UBS litigation?</p> <p>5 A I'm saying, Andy, I have no idea. I</p> <p>6 think there's been -- I think we've over the years</p> <p>7 had three or four different law firms working on</p> <p>8 UBS. I don't know what they totaled.</p> <p>9 Q Okay. Let's continue with what was</p> <p>10 transferred for the insurance policy pursuant to</p> <p>11 Schedule A.</p> <p>12 We now have an entity called "Highland</p> <p>13 CDO Holdings Company." Do you see that?</p> <p>14 A Uh-huh.</p> <p>15 Q Is that a yes?</p> <p>16 A Yes.</p> <p>17 Q And did that entity -- that's a</p> <p>18 subsidiary of Highland Financial Partners?</p> <p>19 A I don't know.</p> <p>20 Q Was -- okay.</p> <p>21 Well, you see that there's a number of</p> <p>22 assets transferred. Fair to say you have no idea</p> <p>23 about the value of "HFT Real Estate," the first</p> <p>24 asset?</p> <p>25 A Correct.</p>	<p>263</p> <p>1 600,000, plus another \$539,000, for a total of</p> <p>2 over \$11 million just on the first page of</p> <p>3 Schedule A, correct?</p> <p>4 A Yes.</p> <p>5 Q And then on the second page we can see</p> <p>6 there is another 539,000 of cash that's being</p> <p>7 transferred from Highland CDO Holdings Company,</p> <p>8 right?</p> <p>9 A Yep.</p> <p>10 Q And then there is another \$300,000 in</p> <p>11 cash from Highland Special Opportunities Holding</p> <p>12 Company, right?</p> <p>13 A Yes.</p> <p>14 Q And there is another \$80,000 in cash</p> <p>15 from Highland Financial Corp.?</p> <p>16 A Yep.</p> <p>17 Q And a tax fund receivable?</p> <p>18 A Yep.</p> <p>19 THE WITNESS: Hey, Andy, I'm going to</p> <p>20 have to put a break on this. I'm getting tired.</p> <p>21 We can revisit tomorrow but --</p> <p>22 MR. CLUBOK: Okay. You want to revisit</p> <p>23 tomorrow, huh?</p> <p>24 Let's go off the record.</p> <p>25 THE VIDEOGRAPHER: Off record. 8:35.</p>
<p>262</p> <p>1 Q Or the second asset -- the NexPoint</p> <p>2 assets, you have no idea what the value of those</p> <p>3 were at the time of this transfer?</p> <p>4 A Correct.</p> <p>5 Q Same with the -- how about the Highland</p> <p>6 Park C 4.93867 asset?</p> <p>7 A Correct.</p> <p>8 Q What about the 25 November 51 -- or</p> <p>9 25NOV51 FRN? Do you know what that was worth?</p> <p>10 A No.</p> <p>11 Q How about a promissory note from CLO</p> <p>12 Holdco of \$32 million? Do you know what that is</p> <p>13 all about?</p> <p>14 A Nope.</p> <p>15 Q Do you know if that is a note that CLO</p> <p>16 Holdco is capable of paying off?</p> <p>17 A I don't know. I don't know who CLO</p> <p>18 Holdco is. Is that the Bermuda entity that we</p> <p>19 were talking about earlier? I don't know.</p> <p>20 Q Oh, you know what, my colleague has</p> <p>21 noted to me that I missed another cash asset of</p> <p>22 539,000 that's right here. So let's just make</p> <p>23 sure we've totaled up all the cash that was</p> <p>24 transferred. It looks like it was 2.3 million,</p> <p>25 plus 7.7, is a little over 10 million, plus about</p>	<p>264</p> <p>1 (A recess was taken.)</p> <p>2 THE VIDEOGRAPHER: On record, 8:40.</p> <p>3 MR. CLUBOK: At Mr. Dondero's request,</p> <p>4 we have agreed to continue the deposition</p> <p>5 Wednesday morning at 8:30 Central Time, sharp.</p> <p>6 Mr. Taylor has an appointment he has got to leave</p> <p>7 for at about 10:15, but we only have a little less</p> <p>8 than an hour and a half left on the record of my</p> <p>9 time, and however much time Mr. Taylor has used,</p> <p>10 so we should be able to get that done.</p> <p>11 But we're agreeing that we're going to</p> <p>12 start on the nose at 8:30, meaning people will be</p> <p>13 in their seats a few minutes before with all the</p> <p>14 technical issues resolved so that we can get</p> <p>15 started right at 8:30, correct?</p> <p>16 MR. TAYLOR: I fully intend on being in</p> <p>17 my seat then. I can't promise everything, but</p> <p>18 yes.</p> <p>19 MR. CLUBOK: And that's correct,</p> <p>20 Mr. Dondero?</p> <p>21 THE WITNESS: Yes, I'll be there.</p> <p>22 MR. CLUBOK: And you understand that</p> <p>23 you will not speak to anybody about the substance</p> <p>24 of this deposition between now and then,</p> <p>25 correct --</p>

Transcript of James Dondero
Conducted on May 10, 2021

67 (265 to 268)

<p>265</p> <p>1 THE WITNESS: Yep.</p> <p>2 MR. CLUBOK: -- or review any other</p> <p>3 documents related the deposition unless we ask you</p> <p>4 to through your lawyer?</p> <p>5 THE WITNESS: Yep.</p> <p>6 MR. CLUBOK: Okay. Let's go off the</p> <p>7 record.</p> <p>8 THE VIDEOGRAPHER: The time is</p> <p>9 8:41 p.m. This suspends today's deposition of</p> <p>10 James Dondero. We're off the record.</p> <p>11 THE COURT REPORTER: Counsel, are you</p> <p>12 ordering a copy of the transcript?</p> <p>13 MS. GEORGE: Yes, we will take a rough</p> <p>14 and a five-day expedite for the final.</p> <p>15 MR. FEINSTEIN: Yes, we would like a</p> <p>16 copy, regular delivery, with a rough to</p> <p>17 rfeinstein@pszjlaw.com.</p> <p>18 MR. TAYLOR: We would like a copy,</p> <p>19 regular delivery, and a rough to</p> <p>20 clay.taylor@bondsellis.com.</p> <p>21 (Time noted: 8:42 p.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>267</p> <p>1 CERTIFICATE OF REPORTER - NOTARY PUBLIC</p> <p>2 I, ADRIENNE MIGNANO, the officer before</p> <p>3 whom the foregoing deposition was taken, do hereby</p> <p>4 certify that the foregoing transcript is a true</p> <p>5 and correct record of the testimony given; that</p> <p>6 said testimony was taken by me and thereafter</p> <p>7 reduced to typewriting under my direction; that</p> <p>8 reading and signing was requested; and that I am</p> <p>9 neither counsel for, related to, nor employed by</p> <p>10 any of the parties to this case and have no</p> <p>11 interest, financial or otherwise, in its outcome.</p> <p>12 IN WITNESS WHEREOF, I have hereunto set</p> <p>13 my hand and affixed my notarial seal this 13th day</p> <p>14 of MAY, 2021.</p> <p>15 My Commission Expires: June 2022.</p> <p>16</p> <p>17 </p> <p>18 _____</p> <p>19 Adrienne Mignano</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>266</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I, JAMES DONDERO, do hereby acknowledge</p> <p>4 that I have read and examined the foregoing</p> <p>5 testimony, and the same is a true, correct and</p> <p>6 complete transcription of the testimony given by</p> <p>7 me and any corrections appear on the attached</p> <p>8 Errata sheet signed by me.</p> <p>9</p> <p>10 _____</p> <p>11 (Date) (Signature)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	